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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1986

WILLIAM WAYNE THOMPSON,  
*Petitioner*,  
v.

STATE OF OKLAHOMA,  
*Respondent*.

On Writ of Certiorari to the  
Court of Criminal Appeals of the State of Oklahoma

BRIEF OF THE NATIONAL LEGAL AID  
AND DEFENDER ASSOCIATION,  
THE NATIONAL ASSOCIATION OF  
CRIMINAL DEFENSE LAWYERS,  
AND THE AMERICAN JEWISH COMMITTEE  
AS *AMICI CURIAE* IN  
SUPPORT OF PETITIONER

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AS *AMICI CURIAE* IN  
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**INTEREST OF AMICI CURIAE<sup>1</sup>**

The National Legal Aid and Defender Association (NLADA) is a non-profit organization with a membership of approximately 4,700 attorneys and organizations. NLADA's primary purpose is to assist in providing effective legal services to persons unable to retain counsel in criminal and civil proceedings.

The National Association of Criminal Defense Lawyers (NACDL) is a non-profit corporation with a nation-wide

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<sup>1</sup> *Amici curiae* have obtained the written consent of the parties to file this brief, as indicated by the consent letters previously filed with the Court.

membership of over 4,000 lawyers. It is concerned with the protection of individual rights and the improvement of criminal law practice and procedures.

The American Jewish Committee (AJC) is an organization of some 50,000 members which was founded in 1906, primarily to protect the civil and religious rights of Jews. AJC, however, has also been deeply committed to assuring liberty and justice for all Americans.

#### SUMMARY OF ARGUMENT

*Amici* begin with the assumption—accepted by the State of Oklahoma in *Eddings v. Oklahoma*, 455 U.S. 104 (1982)—that there is *some* age below which execution becomes cruel and unusual punishment. This brief addresses the question invited by such an assumption: At what age does our culture set the line? *Amici's* answer is age 18. Throughout our legal system, we recognize age 18 as the dividing line between adult responsibilities and childhood. That is the only principled line here as well.

In most states and for most purposes, minority status—defined as lower than age 18—confers a host of legal disabilities. Minors are treated differently because minors *are* different: The diverse legal disabilities are bottomed on the common sense and empirically supportable notion that minors lack maturity, judgment, impulse control and experience. Finally, exemption of minors from capital punishment will not detract from the penological justifications for the death penalty. Exclusion of minors from the death penalty would not abate the deterrent force of the penalty for other minors, since adolescents are less likely to commit the sort of coldly calculated crimes that the death penalty may be expected to deter. Exemption of minors from execution would not dilute deterrence for adults, because adults would most likely not identify with condemned minors. Juvenile executions also are so rare that preclusion of such executions can have little impact on the deterrence of the population at large. Jury be-

havior demonstrates that execution of minors would not materially advance the interest in retribution: Juries, the representatives of the community whose outrage is being expressed by death sentences, seldom vote to condemn minors.

#### ARGUMENT

##### THE EXECUTION OF A YOUTH WHO WAS UNDER THE AGE OF EIGHTEEN AT THE TIME OF THE OFFENSE WOULD VIOLATE EVOLVING STANDARDS OF DECENTY

The cruel and unusual punishments clause of the eighth amendment, made binding upon the states through the fourteenth amendment, prohibits punishments that violate "the evolving standards of decency that mark the progress of a maturing society," *Trop v. Dulles*, 356 U.S. 86, 101 (1958), as those standards are revealed by history and tradition, legislative enactments, and actual jury verdicts. *Tison v. Arizona*, 55 U.S.L.W. 4496, 4499 (U.S. April 21, 1987); *Enmund v. Florida*, 458 U.S. 782 (1982); *Coker v. Georgia*, 433 U.S. 584, 592 (1977). The execution of a youth for an offense committed when he was under age 18 violates contemporary norms and is therefore unconstitutional.

When it last argued to the Court that minors may be put to death, the State of Oklahoma conceded that "it would be cruel and unusual punishment to impose the death penalty on an individual who was ten years old . . . [T]hat by itself would be enough to convince anybody, including this Court, that a ten-year-old person under no circumstances should receive the death penalty." Transcript of Oral Argument (November 2, 1981) at 28, *Eddings v. Oklahoma*, 455 U.S. 104 (1982). The age of ten was not hypothetical. The youngest children known to have been executed in the United States were two ten-year-olds: A Black child, whose name has been lost to history and who was hanged in Louisiana in 1855, and

James Arcene, a Cherokee Indian child hanged in Arkansas in 1885.<sup>2</sup>

Today, we intuitively recoil at the thought of putting a ten-year-old child to death. This reaction reflects a century-old evolution both in the law and in the culture within which the law evolves, an evolution towards recognition of a special concern for young people. The vexing question then becomes: At what age does this special concern for young people give way to an insistence that they pay the ultimate price for their acts?

This question was presented in *Eddings v. Oklahoma*, 455 U.S. 105 (1982), but the Court did not reach the constitutionality of inflicting the death penalty on juveniles. *Id.* at 110 n.5. Instead, the Court remanded Eddings' death sentence to the Oklahoma courts with instructions to "consider all relevant mitigating evidence and weigh it against the evidence of the aggravating circumstances." *Id.* at 117. *Eddings* held that "youth must be considered a relevant mitigating factor." *Id.* at 115. Amici submit that the individualized consideration of the defendant's age required by *Eddings* is insufficient to prevent the imposition of death sentences which are cruel and unusual under contemporary standards.<sup>3</sup> The facts

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<sup>2</sup> Streib, *Death Penalty for Children: The American Experience With Capital Punishment for Crimes Committed While Under Age Eighteen*, 36 Okla. L. Rev. 613, 619-20 (1983). Estimates of the youngest person put to death in this century vary. One commentator opined that "since 1900, the youngest has been 13-year-old Fortune Ferguson, Jr., electrocuted at the Florida State Prison on April 27, 1927." *Id.* at 620. Another writer argued that George Stinney, executed at age 14 by South Carolina in 1944, was the youngest person put to death in this century. Bruck, *Executing Teen Killers Again: The 14-Year-Old Who, in Many Ways, Was Too Small for the Chair*, Washington Post, Sept. 15, 1985, at D1.

<sup>3</sup> In *Eddings*, the death sentence was reinstated by the trial judge following remand from this Court. *Eddings v. State*, 688 P.2d 342, 343 (Okla. Crim. App. 1984), cert. denied, 470 U.S. 1051 (1985). The Oklahoma Court of Criminal Appeals modified the sentence to life imprisonment. *Id.*

of the case before the Court starkly illustrate the need to draw a line between childhood and adulthood that reflects our shared notions of responsibility and culpability.

Amici will demonstrate that the eighth and fourteenth amendments require that a person be eighteen years or older at the time of the offense to be subject to the death penalty.<sup>4</sup> Drawing the line at any given age should be "informed by objective factors to the maximum possible extent." *Coker v. Georgia*, 433 U.S. 584, 592 (1977). In this case the line is easier to identify than most: Throughout our legal system, we recognize age eighteen as the dividing line between adult responsibility and childhood.

#### A. In Most States and for Most Purposes, Age Eighteen Marks the Boundary Between Childhood and Adult Responsibilities

The "law has generally regarded minors as having a lesser capability for making important decisions," *Carey v. Population Services International*, 431 U.S. 678, 693 n.15 (1977), and "recognizes a host of distinctions between the rights and duties of children and those of adults." *New Jersey v. T.L.O.*, 469 U.S. 325, 350 n.2 (1985) (Powell, J., concurring). Because of these distinctions, the Court has "sustained legislation aimed at protecting the physical and emotional well-being of youth even when the laws have operated in the sensitive area of constitutionally protected rights." *New York v. Ferber*, 458 U.S. 747, 757 (1982). The "State's interest in the welfare of its young citizens justifies a variety of protective measures. Because he may not foresee the consequences of his decision, a minor may not make an enforceable bargain. He may not lawfully work or travel

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<sup>4</sup> The relevant age should, of course, be age at the time of the offense rather than age at the time of trial. See, e.g., Institute of Judicial Administration/American Bar Association, Juvenile Justice Standards, Standards Relating to Transfer Between Courts, Commentary to Standard 1.1, at 15 (1980).

where he pleases, or even attend exhibitions of constitutionally protected adult motion pictures. Persons below a certain age may not marry without parental consent." *H. L. v. Matheson*, 450 U.S. 398, 421-22 (1981) (Stevens, J., concurring) (quoting *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 102 (1976) (Stevens, J., dissenting)); see also *Danforth*, 428 U.S. at 95 & n.2 (White, J., dissenting). The "experience of mankind, as well as the long history of our law, recogniz[es] that there are differences which must be accommodated in determining the rights and duties of children as compared with those of adults. Examples of this distinction abound in our law: in contracts, in torts, in criminal law and procedure, in criminal sanctions and rehabilitation, and in the right to vote and to hold office." *Goss v. Lopez*, 419 U.S. 565, 590-91 (1975) (Powell, J., dissenting) (emphasis in original).

In Oklahoma, a minor—defined as a person under age 18 unless otherwise provided by statute—<sup>5</sup> cannot vote;<sup>6</sup> cannot sit on a jury;<sup>7</sup> cannot marry without permission of a parent or guardian;<sup>8</sup> cannot possess alcohol;<sup>9</sup> cannot purchase cigarettes;<sup>10</sup> cannot patronize bingo par-

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<sup>5</sup> Okla. Stat. Ann. tit. 15, § 13 (West 1983). Prior to 1972, Oklahoma defined the commencement of civil majority as age 18 for females and age 21 for males; females were held criminally responsible as adults at age 18 and males at age 16. *Craig v. Boren*, 429 U.S. 190, 197 (1976). In 1972, age 18 was established as the age of majority for males and females for civil and criminal purposes. *Id.*

<sup>6</sup> Okla. Const. art. 3, § 1.

<sup>7</sup> Okla. Stat. Ann. tit. 38, § 28 (West Supp. 1987).

<sup>8</sup> Okla. Stat. Ann. tit. 43, § 3 (West 1979) (age 18).

<sup>9</sup> Okla. Stat. Ann. tit. 21, § 1215 (West 1983) (age 21).

<sup>10</sup> Okla. Stat. Ann. tit. 21, § 1241 (West Supp. 1987) (age 18).

lors<sup>11</sup> or pool halls;<sup>12</sup> cannot pawn property;<sup>13</sup> cannot consent to services by health professionals for most medical care, unless he is married or otherwise emancipated;<sup>14</sup> cannot donate blood without parental permission;<sup>15</sup> may disaffirm any contract, except for "necessaries";<sup>16</sup> and may not operate or work at a shooting gallery.<sup>17</sup> The Oklahoma delinquency statutes define "child" as "any person under the age of eighteen."<sup>18</sup>

Oklahoma is not unique; minority status universally confers a host of disabilities.<sup>19</sup> Eighteen years is the line selected by Congress and the states in their enactment and ratification of the twenty-sixth amendment to the Constitution, governing voting age. Following extensive

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<sup>11</sup> Okla. Stat. Ann. tit. 21, § 995.13 (West 1983) (age 18).

<sup>12</sup> Okla. Stat. Ann. tit. 21, § 1103 (West 1983) (age 18).

<sup>13</sup> Okla. Stat. Ann. tit. 59, § 1511 (West Supp. 1987) (age 18).

<sup>14</sup> Okla. Stat. Ann. tit. 32, § 2602 (West 1984) (age 18 unless in Armed Services).

<sup>15</sup> Okla. Stat. Ann. tit. 63, § 2152 (West 1983) (age 18).

<sup>16</sup> Okla. Stat. Ann. tit. 15, §§ 19, 20 (West 1983) (age 18).

<sup>17</sup> Okla. Stat. Ann. tit. 63, § 703 (West 1984) (age 21).

<sup>18</sup> Okla. Stat. Ann. tit. 10, § 1101 (West 1987).

<sup>19</sup> See generally Note, *The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles*, 61 Ind. L.J. 757, 775-80 (1986); United States Department of Health and Human Services, *The Legal Status of Adolescents* 1980 (1981). These legal disabilities are not without exceptions. The "emancipation" of a minor—by, for example, marriage or enlistment in the armed services—may free him from the legal disabilities prior to the actual date of his majority. See, e.g., Cal. Civ. Code Ann. § 62 (West 1954 & Supp. 1986); Utah Code Ann. § 15-2-1 (Supp. 1986). However, parental consent is required for minors to marry, see Appendix C, or to enlist in the military. 50 U.S.C. § 454 app. (c) (1981). The "mature minor" notion also permits a child to consent to medical treatment if he is capable of appreciating its nature and consequences. See, e.g., Ark. Stat. Ann. § 82-363(g) (1976 & Supp. 1986). Few jurisdictions recognize this concept, however.

hearings,<sup>20</sup> both state and federal legislatures agreed to give constitutional significance to age 18 as the time when young people should first be permitted to participate in the most basic civic responsibility of adults in our democracy. Eighteen also is the minimum age at which a citizen may be drafted into the armed services as well as the minimum age at which a person may enlist without parental consent. 50 U.S.C. app. § 454(a), (c) (1981).

In most states and for most purposes, a "minor" means one below age 18:

- Forty-four jurisdictions set age 18 as the age of majority; two jurisdictions set the age at 21, three at 19, and two do not set a uniform age of majority. *See Appendix A.*
- Forty-three jurisdictions require jurors to be 18 years or older, while three require jurors to be at least 19 years and five require jurors to be at least 21. *See Appendix B.*
- In fifty jurisdictions, both parties must be at least 18 years old to marry without parental consent. In one jurisdiction, both parties must be at least 21 years old. *See Appendix C.*
- Thirty-seven jurisdictions establish 18 (unless the minor is emancipated) as the age of consent for all forms of non-emergency medical treatment; one jurisdiction puts the age at 17, one jurisdiction puts the age at 16, one sets the age at 15, one jurisdiction puts the age at 14, two permit treatment if the minor is able to understand the decision, and eight jurisdictions have no legislation in this area. *See Appendix D.*

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<sup>20</sup> See *Lowering the Voting Age to 18: Hearings Before the Subcomm. on Constitutional Amendments of the Sen. Comm. on the Judiciary*, 91st Cong., 2d Sess. (1970); S. Rep. No. 92-26, 92d Cong., 1st Sess. (1971); H.R. Rep. No. 92-37, 92d Cong., 1st Sess. (1971).

- Thirty-three jurisdictions require a person to be 18 to receive a driver's license without parental consent; four jurisdictions set the age at 17, while fourteen set it at 16. *See Appendix E.*
- In forty jurisdictions, a person must be at least 18 to purchase pornographic materials; six jurisdictions set the age at 17, two jurisdictions set it at 16, one sets it at 19, one has simply outlawed obscenity by statute, and one jurisdiction has no legislation in this area. *See Appendix F.*
- Of the thirty-nine jurisdictions which permit gambling, thirty-one set the minimum age at 18, four set it at 21, one sets it at 19, one at 17, and two at 16. *See Appendix G.*
- Of the twenty-three jurisdictions which set a minimum age for admission to pool halls, nineteen jurisdictions put the age at 18, two set the age at 16, while one jurisdiction puts the age at 21, and one puts it at 19. *See Appendix H.*
- Of the thirty-one jurisdictions which set a minimum age for the right to pawn property, or to sell to junk or precious metals dealers, twenty-eight set the age at 18, while three set the age at 16. *See Appendix I.*
- In twenty-five jurisdictions, a person must be at least 18 years old to work in a hazardous occupation. One jurisdiction puts the age at 17, twenty-two jurisdictions set the age at 16, and three put it at 14. *See Appendix J.*
- Many localities have juvenile curfew ordinances.<sup>21</sup> The "most common upper age limit"

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<sup>21</sup> A 1957 study revealed that more than 50% of all cities with populations of greater than 100,000 had juvenile curfew ordinances on the books. Note, *Curfew Ordinances and the Control of Nocturnal Juvenile Crime*, 107 U. Pa. L. Rev. 66, 66-68 & n.5 (1958). A more recent commentator observed that "thousands of cities" have had such ordinances for "a long time." F. Zimring, *The Changing Legal World of Adolescence* 13 (1982). The District of Columbia is the most recent jurisdiction to consider such an ordi-

is 18. Comment, *Juvenile Curfew Ordinances and the Constitution*, 76 Mich. L. Rev. 109, 140 (1977).

Contemporary attitudes toward minors are reflected further in the development of juvenile justice systems. "Juvenile courts exist because Americans admit to a fundamental difference between children and adults." Institute of Judicial Administration/American Bar Association, Juvenile Justice Standards, Standards Relating to Transfer Between Courts 1 (1980). Every state has a comprehensive juvenile court system, *Kent v. United States*, 383 U.S. 541, 554 n.19 (1966), the principal purpose of which is to rehabilitate<sup>22</sup> and the premise of which is that minors are not fully responsible for their offenses and therefore should be treated more benignly than their adult counterparts. See *McKeiver v. Pennsylvania*, 403 U.S. 528, 551-52 (1971) (White, J., concurring); Institute of Judicial Administration/American Bar Association, Juvenile Standards, Standards Relating to Transfer

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nance; the proposed D.C. law would set the age at 18. LaFraniere, *Minors' Entertainment Curfew Sought in D.C.*, Washington Post, May 6, 1987, at C1.

<sup>22</sup> To be sure, the "fond and idealistic hopes of the juvenile court proponents and early reformers of three generations ago have not been realized." *McKeiver v. Pennsylvania*, 403 U.S. 528, 543-44 (1971); see also *In re Winship*, 397 U.S. 358 (1970). But the disappointments have turned more on "the availability of resources, on the interest and commitment of the public, on the willingness to learn, and on understanding as to cause and effect," *McKeiver*, 403 U.S. at 547, rather than on fundamental flaws in the juvenile court philosophy. The Court's cases, such as *McKeiver* and *Winship*, confirm that virtually none of "[t]he serious critics of the juvenile court experiment . . . question the initial decision that adolescents ought to be handled in a legal process separate from adults. The battle is over the treatment of adolescents within the separate process." Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 Wis. L. Rev. 7, 8; see also President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 9 (1967) (quoted in *McKeiver v. Pennsylvania*, 403 U.S. 528, 546 n.6 (1971)).

Between Courts 1 (1980); *The Juvenile Court and Serious Offenders*, 35 Juv. & Family Ct. J. (Preamble) (Summer 1984). In particular, the legislation establishing juvenile court jurisdiction supports the proposition that age 18 is the relevant cut-off point between childhood and adult responsibilities. Thirty-seven states and the District of Columbia designate 18 years as the appropriate maximum age for juvenile court jurisdiction; one state sets the age at 19, eight set the age at 17, and four set the age at 16. S. Davis, *Rights of Juveniles: The Juvenile Justice System*, App. B (1986); accord National Institute for Juvenile Justice and Delinquency, U.S. Department of Justice, Major Issues in Juvenile Justice Information and Training, *Youth in Adult Courts: Between Two Worlds* 44, 86 n.2 (1982). Most model standards reflect the judgment of the vast majority of jurisdictions which set age 18 as the boundary of juvenile courts.<sup>23</sup> The Institute of Judicial Administration and the American Bar Association, for example, proposed that the "eighteenth birthday should define an adult for the purposes of court jurisdiction" because the "eighteenth birth-

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<sup>23</sup> United States Department of Health, Education and Welfare, Welfare Administration, Children's Bureau, Standards For Juvenile and Family Courts 36 (1966) ("Successful experience in these courts over many years has established the soundness of this age level [18 years] of Jurisdiction"); National Conference of Commissioners on Uniform State Laws, Uniform Juvenile Court Act of 1968, Section 2.1(i) (1979) (18 years); United States Department of Justice, National Institute for Juvenile Justice and Delinquency Prevention, Working Papers of the National Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Jurisdiction—Delinquency, Vol. IV, at 10-11 (1977) (18 years); Institute of Judicial Administration/American Bar Association, Juvenile Justice Standards, Standards Relating to Transfer Between Courts, Standard § 1.1A and Commentary (1980) (18 years); Institute of Judicial Administration/American Bar Association, Juvenile Justice Standards, Standards Relating to Juvenile Delinquency and Sanctions, Standard 2.1 and Commentary (1980) (18 years); Twentieth Century Fund Task Force on Sentencing Policy toward Young Offenders, *Confronting Youth Crime* 9 (1978) (18 years).

day signals the achievement of majority for many legal purposes. The twenty-sixth amendment to the United States Constitution establishes a constitutional right to vote in federal elections at that age. This near consensus among the states and the federal government argues compellingly that juvenile court jurisdiction should end at eighteen." Standards Relating to Transfer Between Courts, *supra*, Commentary to Standard 1.1A.<sup>24</sup>

The limitation of eligibility for the death penalty to those eighteen years or older at the time of the offense is supported by the American Bar Association, the American Law Institute's Model Penal Code and the National Commission on Reform of Federal Criminal Laws. The ABA passed a resolution in 1983 opposing "the imposi-

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<sup>24</sup> We recognize that while every state and the District of Columbia has a juvenile justice system, most jurisdictions also have mechanisms permitting transfer of otherwise juvenile cases into the adult criminal justice system. At least three states—New York, Nebraska and Arkansas—do not provide for waiver of jurisdiction. S. Davis, *supra* at 4-1. Moreover, the broad consensus of the 38 jurisdictions that recognize age 18 as the general limit to juvenile court jurisdiction demonstrates that our society recognizes age 18 as a crucial watershed in an individual's development. Whatever courts may be chosen to try a juvenile under 18 charged with murder by operation of transfer provisions, our evolving standards of decency forbid execution of such an offender.

This conclusion is consistent with the rationale underlying transfer provisions: namely, there are certain juveniles who will require punishment or treatment beyond the age of eighteen, the jurisdictional limitations for most juvenile courts. By permitting transfer of these juveniles to the adult system, these courts gain jurisdiction to ensure that the penal system will have sufficient time both to exact the necessary punishment and to attempt rehabilitation. Furthermore, the decision to transfer a juvenile into the adult court system does not turn on questions of individualization and criminal responsibility, both constitutionally indispensable in deciding whether to impose the death penalty. Transfer and capital sentencing simply ask different questions. Comment, *Capital Punishment for Minors: An Eighth Amendment Analysis*, 74 J. Crim. L. & Criminology 1471, 1499-1501 (1983).

tion of capital punishment upon any person for any offense committed while under the age of eighteen." See American Bar Association Report No. 117A, approved August 1983; see also Streib, *The Eighth Amendment and Capital Punishment of Juveniles*, 34 Clev. St. L. Rev. 363, 388 (1987). This resolution is especially significant because it is the first time in its history that the ABA has taken a formal position on any aspect of capital punishment. The American Law Institute's Model Penal Code has, since 1962, contained a recommendation that the death penalty not be imposed on offenders below age eighteen. See American Law Institute, Model Penal Code § 210.6(1)(d) (Proposed Official Draft 1962). This view was reaffirmed by revisers of the Code in 1980, despite suggestions that the age be lowered or that youth merely be considered as a mitigating circumstance. See American Law Institute, Model Penal Code § 210.6, Comment at 133 (Official Draft and Revised Comments 1980). The National Commission on Reform of Federal Criminal Laws also took the position that 18 ought to be the minimum age. See National Commission on Reform of Federal Criminal Laws, Final Report of the New Federal Code § 3603 (1971).

The domestic legislative evidence that age 18 is the appropriate boundary between juvenile and adult responsibility coincides with international law. Although incomplete, "[t]he available evidence of contemporary state practice in the application of the death penalty seems to establish a remarkably consistent adherence to the prohibition on execution of juvenile offenders in all regions and political systems." Hartman, "*Unusual Punishment: The Domestic Effects of International Norms Restricting the Application of the Death Penalty*", 52 U. Cin. L. Rev. 655, 666 (1983). Of the 164 countries for which data were available, 122 imposed the death penalty. Significantly, of these 122 countries, 45 had statutory provisions recognizing youth as exempt from the death pen-

alty: 29 nations set the minimum age at 18, one sets the age at 21, three at 20, five at 16, and five prohibited the execution of "minors" while two others prohibited the execution of "young people." *Id.* at 666-67 n.44. The significance of these figures is not so much that nations set a minimum age, but that two-thirds of those which did set the age at 18. Equally significant, of 81 nations which were reported to have actually executed persons in the period between 1973 and 1982, only two states officially reported executions of juveniles. *Id.* Out of the thousands of executions recorded by Amnesty International throughout the world between January 1980 and May 1986, only eight in four countries were reported to have been of persons who were under age 18 at the time of the crime; three of these eight executions occurred in the United States. See Amnesty International, *United States of America: The Death Penalty* 74 (1987).<sup>25</sup> An earlier study in 1965 found that out of 95 countries reporting, 61 set age 18 as the minimum age for capital punishment. See Patrick, *The Status of Capital Punishment: A World Perspective*, 56 J. Crim. L., Criminology, & P.S. 397, 398-404 (1965). Reports of the Secretary General of the United Nations confirm that "the great majority of Member States report never condemning to death persons under 18 years of age." See United Nations, Economic and Social Council, Report of the Secretary General, *Capital Punishment* 17 (1973). It is telling that the 36 condemned juveniles on America's death row could not have been sentenced to death if they had been convicted in the Soviet Union, China, Iran, Iraq, or South Africa.

The policy of the United States has also reflected these international norms. In 1977, the United States became

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<sup>25</sup> Even if executions of juveniles abroad are underreported, these numbers remain compelling: A nation's unwillingness to admit execution of minors is itself evidence of a norm against that practice.

a signatory to two international human rights treaties that prohibit execution for crimes committed before age 18. The International Covenant on Civil and Political Rights, which has been ratified by 81 nations and signed by another nine nations, provides that death "shall not be imposed for crimes committed by persons below eighteen years." See Multilateral Treaties Deposited With the Secretary General of the U.N., at 124, U.N. Doc. ST/LEG/Ser.E/3 (1985). Similarly, the American Convention on Human Rights, ratified by 19 American nations and signed by an additional three countries, provides that capital punishment "shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age." See *Handbook of Existing Rules Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L/V/11.65, Doc. 6, at 63 (July 1, 1985). President Carter signed both treaties in 1977. The Senate has not yet ratified either covenant. Based on the policies embedded in these treaties and other materials, the Inter-American Commission on Human Rights recently found an emerging—although not yet extant—norm of customary international law establishing 18 to be the minimum age for imposition of the death penalty. See Resolution N, Inter-American Commission on Human Rights, Organization of American States, OEA/Ser.L/V/11.69, Doc. 17, at 38 (March 27, 1987).

The laws and policies discussed in this section reflect an almost universal judgment that adolescents ought to be treated differently than adults. There generally are no exceptions to that judgment. Public officials do not consider requests by especially mature adolescents to allow them to vote, serve as jurors, or drink alcoholic beverages. As a society, we treat those under age 18 as categorically different from adults.<sup>26</sup> These lines reflect clear distinc-

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<sup>26</sup> If there is any other arguable contender to age 18, it must be age 21. In 1984 Congress overwhelmingly passed the National Minimum Drinking Age Act withholding federal highway funds

tions between children and adults, distinctions that require this Court to draw the line at age 18 for the imposition of the death penalty.

**B. The Reasons for the Boundary Line: Adolescents Lack the Maturity, Experience, Moral Judgment and Sophistication of Adults**

The various legal disabilities discussed above are bottomed on the common sense and empirically supportable assumption that minors lack the maturity, experience, sophistication and judgment necessary to make important decisions. Hafen, *Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Youth to Their "Rights,"* 1976 B.Y.U. L. Rev. 605, 644-50. That assumption is what these legal disabilities are all about: "Children, by definition, are not

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from states that failed to raise their drinking age to 21. The House of Representatives agreed to the measure by unanimous consent. See 130 Cong. Rec. H7220-H7223 (daily ed. June 27, 1984); 130 Cong. Rec. H5395-H5407 (daily ed. June 7, 1984). The focus of the Senate debate was whether teenagers should be singled out for special treatment. 129 Cong. Rec. S8243 (daily ed. June 26, 1984) (remarks of Sen. Chafee); *id.* at S8246 (remarks of Sen. Byrd); *id.* at S8231 (remarks of Sen. Exon); *id.* at S8209 (remarks of Sen. Lautenberg); *id.* at S8212 (remarks of Sen. Pell); *id.* at S8214 (remarks of Sen. Specter); *id.* at S8237-38 (remarks of Sen. Durenberger); *id.* at S8210; 20 Weekly Comp., Pres. Doc. 1036 (July 17, 1984).

We recognize that the constitutionality of this legislation is a matter presently under plenary consideration by the Court in *South Dakota v. Dole*, 107 S. Ct. 869 (1987) (order granting certiorari). The outcome of *Dole* will not affect our point here: The ultimate validity or invalidity of the statute does not minimize the importance of the congressional recognition that teenagers are particularly vulnerable to exercising poor judgment and need special protections. Further, no party to the *Dole* litigation seems to dispute that teenagers need special protections. Brief of Petitioner at 19, 62, 68; Brief of Amici Curiae, National Beer Wholesalers' Association and 46 State Beer, Wine and Distilled Spirits Associations in Support of Petitioner, at 17, *South Dakota v. Dole*, No. 86-260.

assumed to have the capacity to take care of themselves." *Schall v. Martin*, 467 U.S. 253, 265 (1984). For example, in *Oregon v. Mitchell*, the states sought to "justify exclusion of 18- to 21-year-olds from the voting rolls solely on the basis of the states' interests in promoting intelligent and responsible exercise of the franchise." 400 U.S. 112, 243 (1970) (Brennan, White & Marshall, JJ., dissenting).

The Court has long "assume[d] that juvenile offenders constitutionally may be treated differently from adults," *Bellotti v. Baird*, 443 U.S. 622, 635 (1979), and has long recognized that "[c]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a State's duty towards children." *Eddings*, 455 U.S. at 116 n.12 (quoting *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring)). The Court has often expressed the rationale underlying this distinction, explaining that "during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." *Bellotti*, 443 U.S. at 635; see also *H. L. v. Matheson*, 450 U.S. 398, 409-11 (1981).

[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults.

*Eddings*, 455 U.S. at 115-16 (footnote omitted); see also *Skipper v. South Carolina*, 106 S. Ct. 1669, 1675 (1986) (Powell, J., concurring); *New York v. Ferber*, 458 U.S. at 776 (Brennan & Marshall, JJ., concurring) (noting

"the particular vulnerability of children"); *Parham v. J.R.*, 442 U.S. 584, 603 (1979) ("Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions"); *Ginsberg v. New York*, 390 U.S. 629, 649-50 (1968) (Stewart, J., concurring) ("a child . . . is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees") (footnote omitted).

[A]dolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults. Crimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults. Moreover, youth crime as such is not exclusively the offender's fault; offenses by the young also represent a failure of family, school, and the social system, which share responsibility for the development of America's youth.

*Eddings*, 455 U.S. at 116 n.11 (quoting Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, *Confronting Youth Crime* 7 (1978)); see also *Skipper v. Soutl. Carolina*, 106 S. Ct. at 1675 (Powell, J., concurring); *Haley v. Ohio*, 332 U.S. 596, 599 (1948); *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962).

"[A]s any parent knows, children at certain ages are inclined to test the outer boundaries of acceptable conduct . . ." *T.L.O.*, 469 U.S. at 352 (Blackmun, J., concurring). The Court has recognized the "period of great instability which the crisis of adolescence produces." *Haley*, 332 U.S. at 599.

During the "crisis of adolescence" noted in *Haley*, minors are less mature in their ability to make sound judgments and are less able to control their conduct and to recognize the consequences of their acts. Adolescence

is a time<sup>27</sup> when young persons frequently are struggling to arrive at a definition of their own identity; adolescents are particularly likely to rebel against adult authority and to seek affirmation by their peers. E. Erickson, *Childhood and Society* 261-63 (2d ed. 1963). The teen years are "a period of experiment, risktaking and bravado. Some criminal activity is part of the patterns of almost all youth subcultures." Twentieth Century Fund Task Force, *supra*, at 3. The adolescent's intellectual capability to consider and to choose from the realm of possibilities in a comprehensive fashion emerges only in late adolescence and early adulthood. E. Peel, *The Nature of Adolescent Judgment* 153 (1971). Moral character is to a large degree a product of the maturation process. Kohlberg, *Development of Moral Character and Moral Ideology*, in *Review of Child Development Research* 383, 409 (M. Hoffman & L. Hoffman eds. 1964); Rest, Davidson & Robbins, *Age Trends in Judging Moral Issues*, 49 *Child Development* 263 (1978). The ability to make moral judgments depends, at least in part, on broader factors of social experience. Most adolescents simply do not have the breadth and depth of experience which are essential to making sound judgments and to understanding the long-range consequences of their decisions.

Many adolescents possess a "profound conviction of their own omnipotence and immortality. Thus many adolescents may appear to be attempting suicide, but they do not really believe that death will occur." Miller, *Adolescent Suicide: Etiology and Treatment*, in *Adolescent Psychiatry* 327, 329 (S. Feinstein, J. Looney, A. Schwartzberg & A. Sorosky eds. 1981); see also Hostler, *The Develop-*

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<sup>27</sup> Adolescence lasts roughly from age 12 to age 19. Gordon, *The Tattered Cloak of Immortality*, in *Adolescence and Death* 12, 17-19 (C. Coor & J. McNeil eds. 1986).

ment of the Child's Concept of Death, in *The Child and Death* 19 (O. Sahler ed. 1978).<sup>28</sup>

For this reason, threatening a child with death does not have the same impact as threatening an adult with death. “[I]mmature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences . . . .” *Bellotti*, 443 U.S. at 640-41. Adolescents live for the moment, for “an intense present,” with little thought of the future consequences of their actions. Kasterbaum, *Time and Death in Adolescence*, in *The Meaning of Death* 99, 104 (H. Feifel ed. 1959). The defiant attitudes and risk-taking behaviors of some adolescents are related to their “developmental state of defiance about danger and death.” Fredlund, *Children and Death from the School Setting*, 47 J. School Health 533, 535 (1977). They typically have not learned to accept the finality of death. Hostler, *The Development of the Child's Concept of Death*, in *The Child and Death* (O. Sahler ed. 1978). Adolescents tend to view death as a remote possibility; old people die, not teenagers. “Risk-taking with body safety is common in the adolescent years, through sky diving, car racing, excessive use of drugs and alcoholic beverages.” Gordon, *supra*, at 27. Such “chance games” are played by adolescents “out of their own sense of omnipotence.” Miller, *supra*, at 329.

Further, most adolescents grow up. “For most adolescents, age alone is the cure of criminality.” F. Zimring, *Background Paper*, in Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, *supra*, at 37; J. Wilson & R. Herrnstein, *Crime and*

<sup>28</sup> This may help explain a recent rash of teenage suicides that has focused national attention on the issue. See, e.g., 2 *Illinois Suicides Similar to New Jersey Teen-Agers*, Washington Post, March 14, 1987, at A3. Suicide is the third leading cause of death among teenagers. Adler & Dolcini, *Psychological Issues and Abortion for Adolescents*, in *Adolescent Abortion* 84 (G. Melton ed. 1986).

*Human Nature* 144 (1985). Youth is a “time of intense and unfulfilled passions, leading to crimes for goods and pleasures that older people either crave less or can enjoy legally.” *Id.* at 145. Simply stated, an adult is likely to have a lower propensity for crime than a youngster because the adult is older. “Age, like gender, resists explanation because it is so robust a variable. *None of the correlates of age, such as employment, peers, or family circumstances, explains crime as well as age itself.*” *Id.* (footnotes and reference omitted) (emphasis added).<sup>29</sup>

The legislative judgment, nearly universal among the states, that society should treat adolescents and adults differently, and the developmental differences upon which that judgment is based, compel the conclusion that adolescents should be spared from the death penalty, at least until they reach age 18.

#### C. The Reasons for Treating Children Differently From Adults Apply With Special Force Here: The Developmental Differences Between Adolescents and Adults Diminish the State's Interest in Inflicting the Death Penalty on Minors

The “Constitution contemplates that in the end [the Court's] own judgment will be brought to bear on the question of the acceptability of the death penalty under the Eighth Amendment.” *Coker*, 433 U.S. at 597; *accord Enmund*, 458 U.S. at 797; *Gregg v. Georgia*, 428 U.S. 153, 182-83 (1976). This independent judgment is

<sup>29</sup> Statistics suggest that as people move from the turbulence of adolescence to the calmer period of the early twenties, they commit fewer crimes, whether or not they were apprehended or participated in a rehabilitation program. See Office of Juvenile Justice and Delinquency Prevention, U.S. Dept. of Justice, *Assessing the Relationship of Adult Criminal Careers to Juvenile Careers: A Summary* 4 (1982); cf. Federal Bureau of Investigation, U.S. Dept. of Justice, *Crime in the United States: 1978*, 194-96 (1979); Zimring, *American Youth Violence: Issues and Trends*, in *Crime and Justice: An Annual Review of Research* 67 (N. Morris & M. Tonry eds. 1979) (rates of many kinds of criminality peak in mid-adolescence).

informed by the twin penological justifications for the death penalty: general deterrence and retribution. *Tison v. Arizona*, 55 U.S.L.W. at 4499-500; *Skipper v. South Carolina*, 106 S. Ct. at 1675-76 (Powell, J., concurring); *Enmund*, 458 U.S. at 798-99; *Gregg*, 428 U.S. at 183-87. Preclusion of juvenile executions would undermine neither of these goals.

### **1. General Deterrence**

The "death penalty has little deterrent force against defendants who have reduced capacity for considered choice." *Skipper*, 106 S. Ct. at 1675 (Powell, J., concurring). The death penalty may be expected to deter only those who engage in a "cold calculus that precedes the decision to act," those who "carefully contemplate[]" their crimes. *Gregg*, 428 U.S. at 186; see also *Fisher v. United States*, 328 U.S. 463, 484 (1946) (Frankfurter, J., dissenting); W. Bowers, *Legal Homicide* 272 (1984). "The socialization processes, which include the internalization of a society's moral norms and prohibitions, undoubtedly play a role in general deterrence." Gale, *Retribution, Punishment, and Death*, 18 U.C. Davis L. Rev. 973, 995 (1985) (footnote omitted).

Amici have demonstrated above that with adolescents the socialization process is as yet incomplete; for this reason, capital punishment will not likely deter other minors from committing crimes. Adolescents are less likely than adults to calculate rationally; this, indeed, is the premise underlying the states' guardianship and protection of minors. It is unlikely that cold, rational calculation is involved when juveniles commit crimes. See C. Bartollas, *Juvenile Delinquency* 102 (1985). Our culture assumes for countless other purposes that minors, prior to acting, do not engage in the sort of responsible risk-benefit analysis that lies at the core of the deterrence theory. And when adolescents do calculate, the fear of death will not be given its fair measure. Adolescents have not learned to accept death's finality.

Moreover, execution of minors will fail to deter the general population from committing crimes. Potential murderers are most likely to be deterred by the execution of one with whom the potential killer can identify; put another way, execution of a person who is particularly distinguishable from the general population will not serve to deter members of the general population. Cf. A. Goldstein, *The Insanity Defense* 13 (1967); Liebman & Shepard, *Guiding Capital Sentencing Discretion Beyond the "Boiler Plate": Mental Disorder as a Mitigating Factor*, 66 Geo. L.J. 757, 813-17 (1978). Nor will exclusion of minors from execution abate the deterrent force of the death penalty for adults. Finally, because juvenile executions are so rare, their preclusion would have little impact on the deterrence of the population at large. See generally Comment, *Capital Punishment for Minors: An Eighth Amendment Analysis*, 74 J. Crim. L. & Criminology 1471, 1510-13 (1983).

### **2. Retribution**

In addition to deterrence, the Court has said that retribution—the expression of society's outrage at particularly offensive conduct—remains a legitimate penological goal of capital punishment. *Spaziano v. Florida*, 468 U.S. 447, 461-62 (1984); *Enmund*, 458 U.S. at 800-01; *Gregg*, 428 U.S. at 183. But such outrage is tempered when the defendant is an adolescent: *Juries*, the representatives of the community whose outrage is being expressed by death sentences, seldom vote to condemn teenagers.

The *actual practice* of sentencing minors to die, and of actually executing them, has declined to a remarkably low level. As of December, 1983, only thirty-eight (2.9%) of the 1,289 persons on death row were under age eighteen at the time of their crimes.<sup>30</sup> By July of 1986, the

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<sup>30</sup> Streib, *supra*, 34 Clev. St. L. Rev. at 384. We assume that all of these cases involved jury sentences of death. Although four states exclude the jury from the capital sentencing process, *Spaziano*, 468

number had dropped from thirty-eight to thirty-two, while the population of death row had increased by 500. Streib, *supra*, 34 Clev. St. L. Rev. at 384. Thus, while the death row population grew by 42% (from 1,250 to 1,770), the juvenile death-row population decreased by 16%.

Even more strikingly, only seven new juveniles were added to the death row population from December 1983 to March 1986. Approximately 700 total death sentences were imposed during this period. *Id.* Accordingly, juveniles accounted for only 1% of the death sentences meted out during this two and one-half year period.

Review of intentional homicide data dramatically underscores the fact that juries impose capital sentences on juveniles at a significantly lower rate than on adults. Approximately 9.2% of intentional homicides from 1973 through 1983 were committed by persons under eighteen. *Id.*<sup>31</sup> In stark contrast to this 9.2% commission rate, only 2% to 3% of all capital sentences imposed over this period were imposed on juveniles. *Id.* at 387.

Most importantly, data compiled through March of 1987 establish that the juvenile capital-sentencing rate has leveled off at a dramatically low level. Over the last five years, those under age eighteen have been sentenced to death as follows: 1982—11; 1983—9; 1984—6; 1985—3; 1986—7. During this same period, the annual death-sentencing rate for adults has been approximately

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U.S. at 463-64 n.9, none of these states contributed to the present population of juvenile death row. The three states permitting judges to impose death notwithstanding a jury's recommendation of life imprisonment—Alabama, Florida and Indiana—account for seven juvenile death sentences. It is not known whether the juries in these cases recommended life or death.

<sup>31</sup> However, it is the 18 to 24 "age group—beyond the jurisdiction of almost all juvenile courts—that has the highest arrest rate for crimes of violence." President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* 56 (1967).

300 per year.<sup>32</sup> Juvenile death sentences are so rare that they are cruel and unusual "in the same way that being struck by lightning is cruel and unusual." *Furman v. Georgia*, 408 U.S. 238, 309 (1972) (Stewart, J., concurring).

Some courts, upholding the constitutionality of executing minors, have focused upon legislative enactments in concluding that such executions do not offend our society's evolving standards of decency.<sup>33</sup> However, statutes

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<sup>32</sup> Few death sentences translates into still fewer actual executions. A 20-year national moratorium on executing minors ended when Charles Rumbaugh was executed in 1985. Rumbaugh was 17 years old at the time of the crime. Rumbaugh, however, as an adult and after a full evidentiary hearing on his competency to waive further legal action to save his life, volunteered for execution. *Rumbaugh v. Procunier*, 753 F.2d 395 (5th Cir.), cert. denied, 473 U.S. 919 (1985). Early in 1986, Terry Roach became the first nonconsensual execution of a juvenile since 1964; Roach, however, did not allege in his first federal habeas corpus proceeding that execution of a juvenile *per se* violates the Constitution. *Roach v. Martin*, 757 F.2d 1463 (4th Cir.), cert. denied, 106 S. Ct. 185 (1985). Similarly, Jay Pinkerton, executed later in 1986, apparently raised the claim in a successor habeas petition. Thus, of the 70 people executed in the post-*Furman* era, only three were under the age of 18 at the time of their crime, and one of the three volunteered for execution. Further, Rumbaugh and Pinkerton—who were seventeen years old at the time of their offenses—were executed in Texas, where the maximum juvenile court age is 17. Tex. Penal Code Ann. § 8.07(d) (Vernon Supp. 1987).

<sup>33</sup> See, e.g., *Prejean v. Blackburn*, 743 F.2d 1091, 1098-99 (5th Cir. 1984), modified on other grounds, 765 F.2d 482 (5th Cir. 1985), petition for cert. filed, No. 85-5609; *Trimble v. State*, 300 Md. 387, 478 A.2d 1143, 1158-64 (Md. 1984), cert. denied, 469 U.S. 1230 (1985). In fact, legislative responses support age 18 as the minimum age for execution eligibility. As discussed *infra*, legislation places a variety of limitations upon minors, restrictions which evince a consensus that minors are less mature and responsible than adults.

As to capital punishment specifically, the legislative message is more mixed but still supportive of the notion that if an age must be chosen—and surely it must—then eighteen is the only principled

are not determinative, particularly since they have led to only a minuscule number of death sentences or executions. Death penalty legislation alone cannot reveal society's evolving standards of decency.

In the decade and a half since *Furman v. Georgia*, almost every current Justice has written or joined in opinions that look to the pattern of *jury* verdicts in sup-

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line. Of the fifteen states that establish a minimum age for capital punishment, eleven set it at eighteen, three set it at seventeen, and one sets it at sixteen.

Further, the most recent legislative activity has been in the direction of setting 18 as the minimum age. Nebraska in 1982 set 18 as its minimum age for execution; Colorado and Oregon did so in 1985; New Jersey did so in 1986. Neb. Rev. Stat. § 28-105.01 (1985); Colo. Rev. Stat. § 16-11-103 (1986); Or. Rev. Stat. § 161-620 (1985); N.J. Stat. Ann. § 2C: 11-3f (West 1986) (L. 1985, ch. 478, § 1, approved Jan. 17, 1986). In April 1987, Maryland became the latest state to set 18 as the minimum age for capital punishment. Barnes & Schmidt, *Schaefer Praises Session As "Unusually Successful,"* Washington Post, April 14, 1987, at A7. The Governor was "struck by the fact that the decisive Senate votes came not from the newly-elected members of that Chamber, but from Senate veterans who had opposed an exemption for minors in previous years." Letter from William Schaefer to Clayton Mitchell, Speaker, Maryland House of Delegates, April 7, 1987, at 1 (reproduced at Appendix K). The Maryland House of Delegates, in putting the age at 18, reversed the Maryland Judiciary Committee, which had set the age at 16. Barnes, *Death Penalty Exemption Advances*, Washington Post, April 11, 1987, at B4. The 1987 session of the Georgia General Assembly considered such a measure. Shipp, *Restricting Use of Death Penalty is Long Overdue*, Atlanta Journal—Constitution, January 4, 1987, at 1D. The New Hampshire legislature recently re-codified and therefore reaffirmed its exemption of minors from capital punishment. HB 106, Laws 1986, ch. 82:1 (effective Jan. 1, 1987) (codified as N.H. Rev. Stat. Ann. § 630:5 (IX) to (XIII) (1986 Supp.)).

Finally, the recently proposed federal death penalty legislation was amended to provide that a sentence of death may not be imposed upon a person who was less than 18 years old at the time of the offense. *Establishing Constitutional Procedures for the Imposition of Capital Punishment: Report of the Committee on the Judiciary*, 99th Cong., 2d Sess. 30 (1986).

port of a conclusion about the death penalty's constitutionality, either generally or for particular crimes.<sup>34</sup>

<sup>34</sup> Members of the Court have reasoned that the "jury . . . is a significant and reliable objective index of contemporary values because it is so directly involved," *Enmund*, 458 U.S. at 795 (White, Brennan, Marshall, Blackmun & Stevens, JJ.) (quoting *Gregg v. Georgia*, 428 U.S. 153, 181 (1976) (Stewart, Powell & Stevens, JJ.)); that "it is thus important to look at the sentencing decisions that juries have made in the course of assessing whether capital punishment is an appropriate penalty for the crime being tried." *Coker*, 433 U.S. at 596 (White, Stewart, Blackmun & Stevens, JJ.). In *Woodson v. North Carolina*, 428 U.S. 280, 293 (1976), a plurality consisting of Justices Stewart, Powell and Stevens cited jury refusal to convict in mandatory capital cases to support its conclusion that the mandatory statutes did not reflect evolving standards of decency. In *Lockett v. Ohio*, 438 U.S. 586, 625 (1978), Justice White wrote, in concurrence, that the death penalty could not be used if the defendant did not intend the death of the victim, even though at the time "approximately half of the states [had] not legislatively foreclosed the possibility of imposing the death penalty upon those who did not intend to cause death"; the reasoning of Justice White's concurrence in *Lockett* was endorsed by the Court in *Enmund v. Florida*, with both the majority, see 458 U.S. at 795, and the dissent, see *id.* at 818-20 (O'Connor, J., joined by Burger, C.J., Powell & Rehnquist, JJ.), analyzing the behavior of capital juries. The majority in *Enmund* relied on statistics showing that despite these statutes, defendants in this category rarely were executed. Justice Brennan, in *Furman*, also relied on the gap between legislative authorization of capital punishment and the number of death penalties actually inflicted:

When an unusually severe punishment is authorized for wide-scale application but not, because of society's refusal, inflicted save in a few instances, the inference is compelling that there is a deep-seated reluctance to inflict it.

*Furman v. Georgia*, 408 U.S. 238, 300 (1972) (Brennan, J., concurring). In *Coker v. Georgia*, 433 U.S. at 596, a plurality consisting of Justices Stewart, White, Blackmun and Stevens cited *Gregg's* observation that the "jury . . . is a significant and reliable objective index of contemporary values because it is so directly involved." Justice Powell concurred in this reasoning insofar as it supported "the view that ordinarily death is a disproportionate punishment for the crime of raping an adult woman." *Coker*, 433 U.S. at 601.

Thus, the Court, while considering legislative judgments as one measure of society's evolving standards of decency, still looks beyond those judgments to learn whether they are accurate. There is a good reason to do so:

Each lawmaker confronts capital punishment abstractly. No life depends on her vote. Legislative response tells us the degree to which we are willing to have laws permitting execution, but sentencing and execution tell us the degree to which we are willing to carry them out. A statute, furthermore, is static. It remains until changed. As public opinion shifts, older statutes become less reliable indicators of current values. Forces influence legislators that do not affect jurors. A legislator may believe, for example, that death penalty proponents in his constituency are more likely than its opponents to be single-issue voters or are more likely to organize against him, if he opposes capital punishment, than will opponents if he supports it. A constituency's willingness to vote based on a single issue and its degree of organization likely influence a lawmaker's decision and may skew the degree to which the pattern of legislation reflects community sentiment. Of course, legislative action may accurately reflect community sentiment on the acceptability of the death penalty, either generally or in classes of cases. But without a pattern of jury response, we cannot know whether this is true or whether, instead, various political factors have combined to obscure the community view. The jury, "because it is so directly involved," is needed to avoid guessing wrong.

Gillers, *Deciding Who Dies*, 129 U. Pa. L. Rev. 1, 72-73 (1980) (footnotes omitted).

It is no accident that even in an era in which the public perceives a significant increase in juvenile crime, juries almost never vote to execute teenagers. Lay jurors, given the task of expressing the common sense judgment of the community, recognize that adolescents are developmentally distinct from adults, that adolescents grow up,

and that young people are uniquely rehabilitable. Juries recognize that it is unrealistic and inhumane to treat young offenders as if they have fully mature judgment and control.

Or perhaps juries intuit that the philosophical premises of retribution fail when applied to minors. The morality of the anger that fuels the desire for retribution is based on the killer's violation of the social compact. Society has entrusted its citizens with rights, one of which is freedom, and the murderer has grossly abused that freedom. W. Berns, *For Capital Punishment* 155 (1979). The fallacy of this retributive argument as it applies to minors is precisely that we do not entrust minors with such freedom.<sup>35</sup> As discussed above, states do not trust their minors to vote, sit on juries or engage in a wide variety of adult activities.

The inequity of the death penalty for minors is perhaps best captured by a vignette described in S. Gettlinger, *Sentenced to Die* (1979). The mother of a condemned 15-year-old was asked by prison officials for parental consent to emergency treatment for her son, should he need it. The mother observed: "Now, isn't that ironic? . . . He's old enough to be put to death, but he's not old enough to get an aspirin without our consent." *Id.* at 150.

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<sup>35</sup> John Stuart Mill's *On Liberty* set forth, in 1859, the classic antipaternalist position. J.S. Mill, *On Liberty* (Penguin Classics 2d ed. 1986). Mill's logic is utilitarian and argues for the absolute prohibition of state paternalism. Yet Mill found it "hardly necessary to say that [his] doctrine is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children or of young persons below the age which the law may fix as that of manhood or womanhood." *Id.* at 69.

**CONCLUSION**

The Court should hold that execution of those who were younger than age 18 at the time of their offense violates the eighth and fourteenth amendments.

Respectfully submitted,

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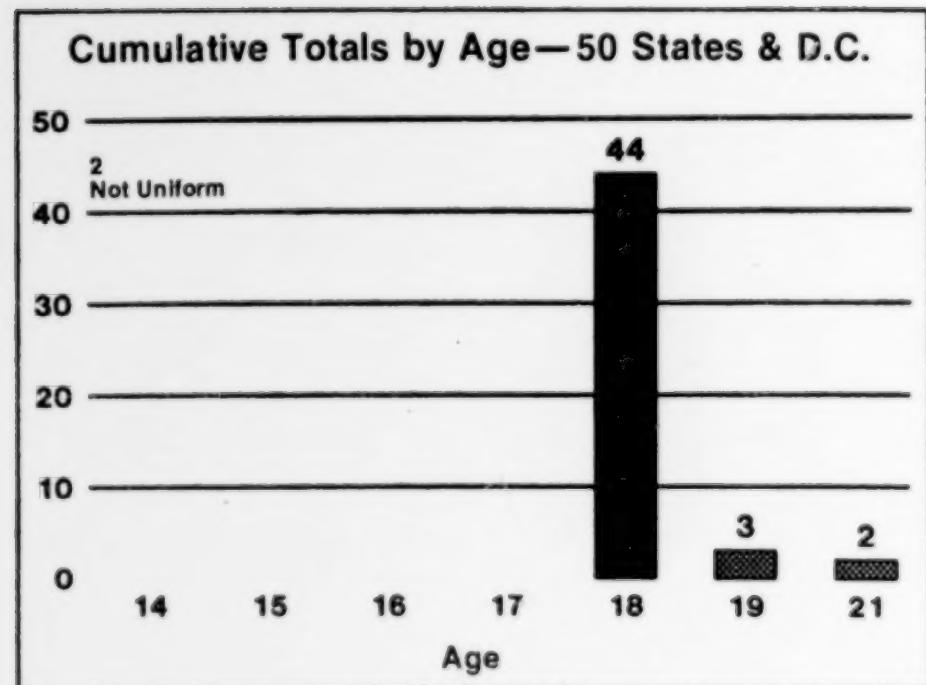
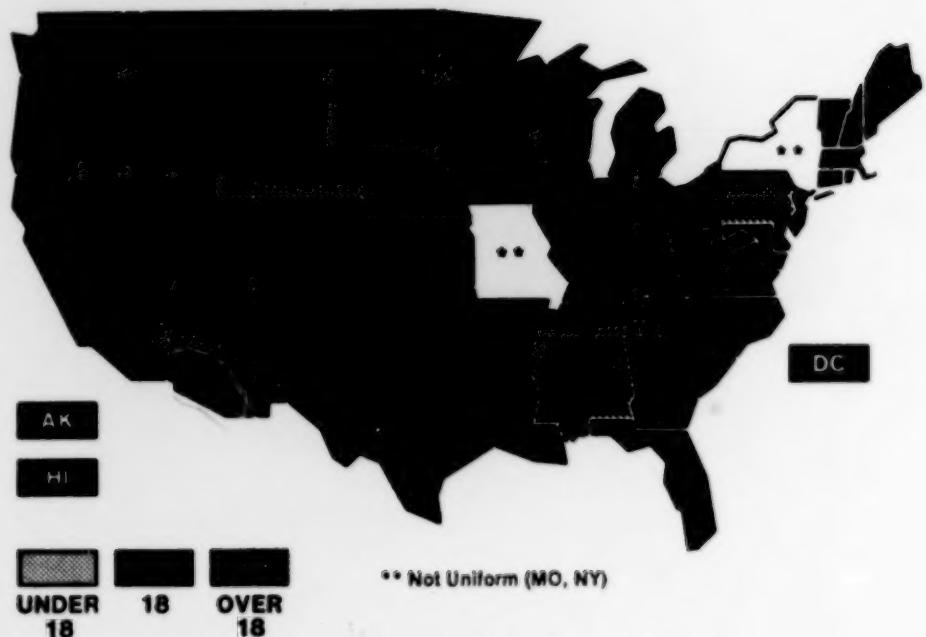
\* Counsel of Record

Date: May 14, 1987

## **APPENDICES**

1a

APPENDIX A  
**Age of Majority**



## AGE OF MAJORITY \*

State	Age	Citation
AL	19	Ala. Code § 26-1-1 (1986)
AK	18	Alaska Stat. § 25.20.010 (1983)
AZ	18	Ariz. Rev. Stat. Ann. § 1-215 (1974)
AR	18	Ark. Stat. Ann. § 57-103 (1985)
CA	18	Cal. Civil Code § 25.1 (West 1982)
CO	18	Colo. Rev. Stat. § 13-22-101 (1974)
CT	18	Conn. Gen. Stat. § 1-1d (Supp. 1986)
DL	18	Del. Code Ann. tit. 1, § 701 (1975)
DC	18	D.C. Code Ann. § 30-401 (1981)
FL	18	Fla. Stat. Ann. § 743.07 (West 1986)
GA	18	Ga. Code Ann. § 39-1-1 (1982)
HI	18	Haw. Rev. Stat. § 577-1 (1976)
ID	18	Idaho Code § 32-101 (1983)
IL	18	Ill. Ann. Stat. ch. 110½ para. 11-1 (Smith-Hurd Supp. 1986)
IN	18	Ind. Code Ann. § 34-1-67-1 (Burns Supp. 1980)
IA	18	Iowa Code Ann. § 599.1 (West 1981)
KS	18	Kan. Stat. Ann. § 38-101 (1986)
KY	18	Ky. Rev. Stat. Ann. § 2.015 (Michie/Bobbs-Merrill 1985)
LA	18	La. Civ. Code Ann. art. 37 (West 1987)
ME	18	Me. Rev. Stat. Ann. tit. 1, § 72 (1979)
MD	18	Md. Ann. Code art. 1, § 24 (1981)
MA	18	Mass. Gen. Laws Ann. ch. 4, § 7 Cl. fifty-first (West 1986)
MI	18	Mich. Comp. Laws Ann. § 722.52 (West Supp. 1986)
MN	18	Minn. Stat. Ann. § 645.451 (West Supp. 1987)
MS	21	Miss. Code Ann. § 1-3-27 (1972)
MO	—	Not Uniform
MT	18	Mont. Code Ann. § 41-1-101 (1985)
NE	19	Neb. Rev. Stat. § 38-101 (1984)

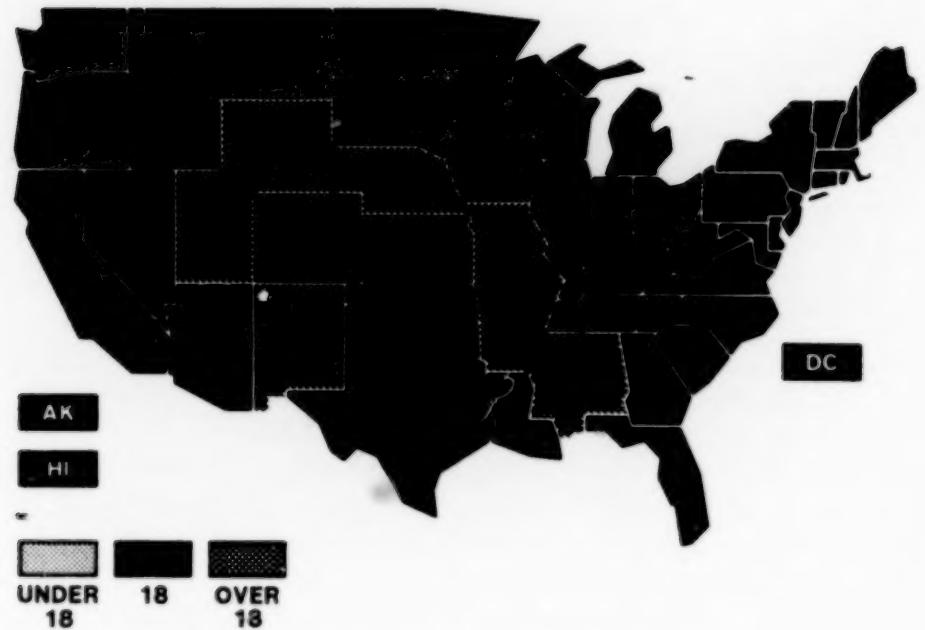
State	Age	Citation
NV	18	Nev. Rev. Stat. § 129.010 (1957)
NH	18	N.H. Rev. Stat. Ann. 21:44 (1985)
NJ	18	N.J. Stat. Ann. § 9:17 B-3 (West 1976)
NM	18	N.M. Stat. Ann. § 28-6-1 (1983)
NY	—	Not Uniform
NC	18	N.C. Gen. Stat. § 48A-2 (1984)
ND	18	N.D. Cent. Code § 14-10-01 (1981)
OH	18	Ohio Rev. Code Ann. § 3109.01 (Baldwin 1983)
OK	18	Okl. Stat. Ann. tit. 15, § 13 (West 1983)
OR	18	Or. Rev. Stat. § 109-510 (1985)
PA	21	Pa. Stat. Ann. tit. 1-6, § 1991 (Purdon 1986)
RI	18	R.I. Gen. Laws § 15-12-1 (1981)
SC	18	S.C. Const. art. XVII, § 14
SD	18	S.D. Codified Laws Ann. § 26-1-1 (1984)
TN	18	Tenn. Code Ann. § 1-3-105 (1985)
TX	18	Tex. Fam. Code Ann. § 11.01(1) (Vernon 1986)
UT	18	Utah Code Ann. § 15-2-1 (1986)
VT	18	Vt. Stat. Ann. tit. 1, § 173 (1985)
VA	18	Va. Code Ann. § 1-13.42 (1979)
WA	18	Wash. Rev. Code Ann. § 26.28.010 (1986)
WV	18	W. Va. Code § 2-2-10 (1979)
WI	18	Wis. Stat. Ann. § 990.01 (West 1985)
WY	19	Wyo. Stat. § 14-1-101 (1986)

Totals (50 States and D.C.)

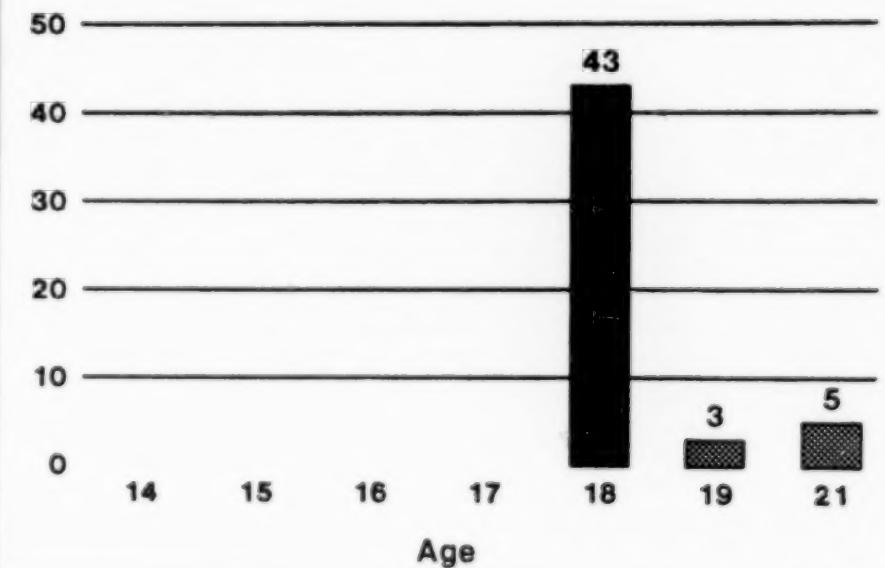
	Age	18	19	21	Not Uniform
Number	44	3	2	2	

\* Counsel gratefully acknowledges the valuable assistance of Janice Mitnick, Margaret McCandless, Stephan Geisler, Robert Taylor, Michael Ollen, Jonathan Graves and James Lee Buck in the preparation of the Appendices to this brief.

APPENDIX B  
Right to Serve on Jury



Cumulative Totals by Age—50 States & D.C.

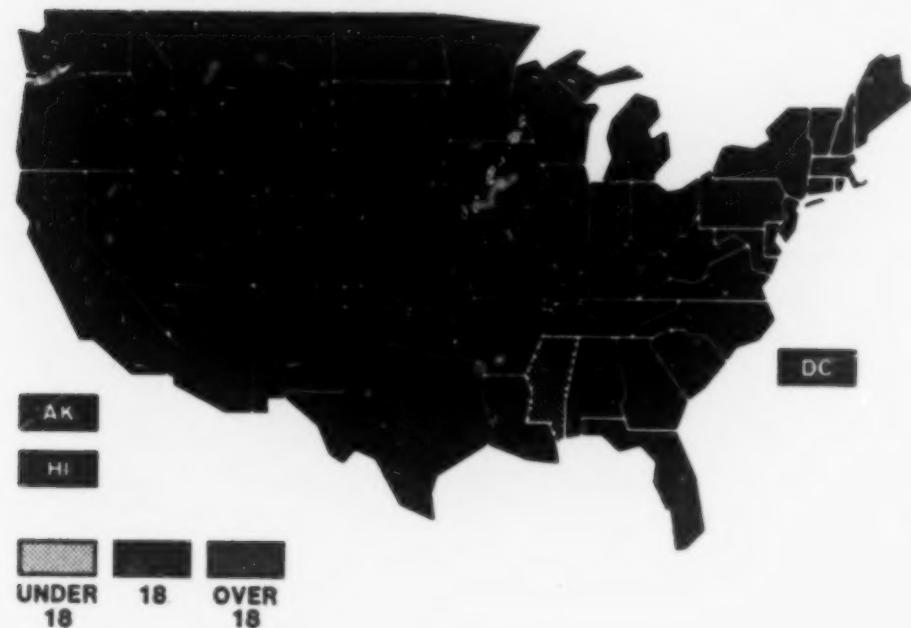


## RIGHT TO SERVE ON JURY

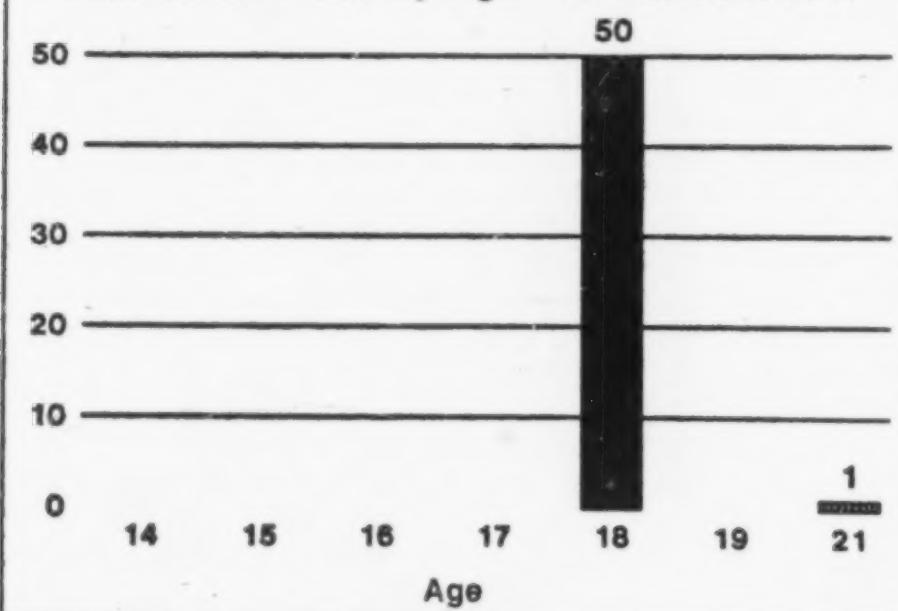
State	Age	Citation
AL	19	Ala. Code § 12-16-60 (1986)
AK	18	Alaska Stat. § 09.20.010 (1983)
AZ	18	Ariz. Rev. Stat. Ann. § 21-301 (1975)
AR	21	Ark. Stat. Ann. § 39-101 (Supp. 1985)
CA	18	Cal. Civ. Proc. § 198 (West 1982)
CO	18	Colo. Rev. Stat. § 13-71-106 (Supp. 1986)
CT	18	Conn. Gen. Stat. § 51-217 (1985)
DL	18	Del. Code Ann. tit. 10, § 4504 (Supp. 1984)
DC	18	D.C. Code Ann. § 11-1901 (1981)
FL	18	Fla. Stat. Ann. § 40.01 (West Supp. 1987)
GA	18	Ga. Code Ann. § 15-12-60 (1985)
HI	18	Haw. Rev. Stat. § 612-4 (1976)
ID	18	Idaho Code § 2-209 (Supp. 1986)
IL	18	Ill. Stat. Ann. ch. 78, para. 2 (Smith-Hurd 1987)
IN	18	Ind. Code Ann. § 35-1-15-11 (Burns 1979)
IA	18	Iowa Code Ann. § 607.2 (West Supp. 1986)
KS	18	Kan. Stat. Ann. § 43-156 (1986)
KY	18	Ky. Rev. Stat. Ann. § 29A.080 (Michie/Bobbs-Merrill 1985)
LA	18	La. Code Crim. Proc. Ann. art. 401 (West 1987)
ME	18	Me. Rev. Stat. Ann. tit. 14, § 1211 (Supp. 1986)
MD	18	Md. Cts. & Jud. Proc. Code Ann. § 8-104 (1984)
MA	18	Mass. Gen. Laws Ann. ch. 234, § 1 (West 1986); ch. 51, § 1 (West 1975)
MI	18	Mich. Comp. Laws Ann. § 600.1304 (West 1981)
MN	18	Minn. Stat. Ann. § 593.41 (West 1987)
MS	21	Miss. Code Ann. § 13-5-1 (1972)
MO	21	Mo. Stat. Ann. § 494.010 (Vernon Supp. 1987)
MT	18	Mont. Code Ann. § 3-15-301 (1985)
NE	19	Neb. Rev. Stat. § 25-1601 (1985)
NV	18 /	Nev. Rev. Stat. § 6.010 (1957)
NH	18	N.H. Rev. Stat. Ann. §§ 500-A:1 to 500-A:2 (1983)

State	Age	Citation
NJ	18	N.J. Stat. Ann. § 9-17B-1 (West Supp. 1986)
NM	21	N.M. Stat. Ann. § 38-5-1 (1978)
NY	18	N.Y. Jud. Law § 510 (McKinney Supp. 1987)
NC	18	N.C. Gen. Stat. § 9-3 (1986)
ND	18	N.D. Cent. Code § 27-09.1-08 (Supp. 1985)
OH	18	Ohio Rev. Code Ann. § 2313.42 (Baldwin 1984)
OK	18	Okl. Stat. Ann. tit. 38, § 28 (West Supp. 1987)
OR	18	Or. Rev. Stat. § 10.030(c) (1985)
PA	18	Pa. Stat. Ann. tit. 42, § 4521 (Purdon 1981)
RI	18	R.I. Gen. Laws § 9-9-1 (Supp. 1984)
SC	18	S.C. Code Ann. § 14-7-140 (Law. Co-op. Supp. 1986)
SD	18	S.D. Codified Laws Ann. § 16-13-10 (1986)
TN	18	Tenn. Code Ann. § 22-1-101 (1980)
TX	18	Tex. Gov't Code Ann. § 62.102 (Vernon 1987)
UT	21	Utah Code Ann. § 78-46-8 (1977)
VT	18	Vt. Stat. Ann.—Administrative Orders and Rules: Qualification List, Selection and Summoning of All Jurors—Rule 25 (1986)
VA	18	Va. Code Ann. § 8.01-337 (1984)
WA	18	Wash. Rev. Code Ann. § 2.36.070 (Supp. 1987)
WV	18	W. Va. Code § 52-1-8 (Supp. 1986)
WI	18	Wis. Stat. Ann. § 756.01 (West 1981)
WY	19	Wyo. Stat. § 1-11-101 (West Supp. 1986)
Totals		(50 States and D.C.)
Age	18	
Number	43	
	19	
	21	
	3	
	5	

APPENDIX C  
Right to Marry Without Parental Consent



Cumulative Totals by Age—50 States & D.C.

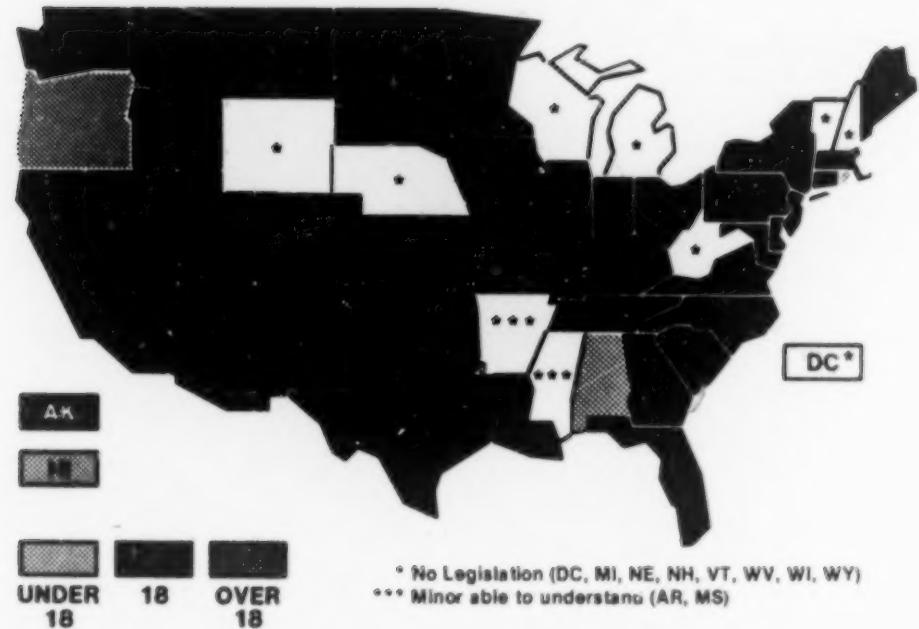


## RIGHT TO MARRY WITHOUT PARENTAL CONSENT

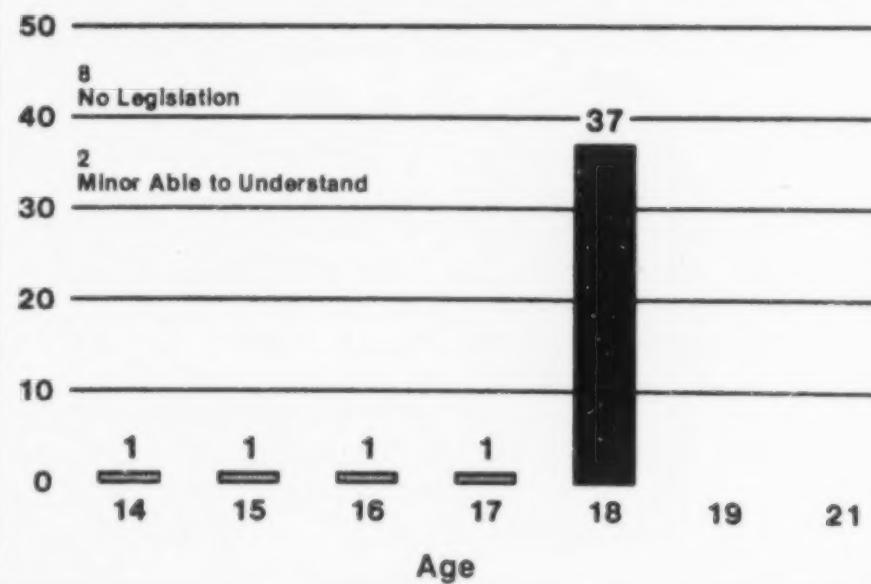
State	Age	Citation
AL	18	Ala. Code § 30-1-5 (1983)
AK	18	Alaska Stat. § 25.05.171 (1983)
AZ	18	Ariz. Rev. Stat. Ann. § 25-102 (1976)
AR	18	Ark. Stat. Ann. § 55-102 (Supp. 1985)
CA	18	Cal. Civ. Code § 4101 (West 1983)
CO	18	Colo. Rev. Stat. § 14-2-106 (Supp. 1986)
CT	18	Conn. Gen. Stat. § 46b-30 (1986)
DL	18	Del. Code Ann. tit. 13, § 123 (1981)
DC	18	D.C. Code Ann. § 30-111 (1981)
FL	18	Fla. Stat. Ann. § 741.04 (1986)
GA	18	Ga. Code Ann. § 19-3-37 (1982)
HI	18	Haw. Rev. Stat. § 572-2 (1976)
ID	18	Idaho Code § 32-202 (1963)
IL	18	Ill. Ann. Stat. ch. 40, para. 203 (Smith-Hurd Supp. 1986)
IN	18	Ind. Code Ann. § 31-7-1-6 (Burns Supp. 1986)
IA	18	Iowa Code Ann. § 595.2 (West 1981)
KS	18	Kan. Stat. Ann. § 23-106 (1981)
KY	18	Ky. Rev. Stat. Ann. § 402.210 (Michie/Bobbs-Merrill 1984)
LA	18	La. Civ. Code Ann. art. 97 (West 1952)
ME	18	Me. Rev. Stat. Ann. tit. 19, § 62 (1981)
MD	18	Md. Fam. Law Code Ann. § 2-301 (1984)
MA	18	Mass. Gen. Laws Ann. ch. 207, § 7 (West Supp. 1986)
MI	18	Mich. Comp. Laws Ann. § 551.103 (West Supp. 1986)
MN	18	Minn. Stat. Ann. § 517.02 (West Supp. 1987)
MS	21	Miss. Code Ann. § 93-1-5(d) (Supp. 1986)
MO	18	Mo. Ann. Stat. § 451.090 (Vernon 1986)
MT	18	Mont. Code Ann. § 40-1-202 (1985)
NE	18	Neb. Rev. Stat. § 42-105 (1984)
NV	18	Nev. Rev. Stat. § 122.020 (1957)
NH	18	N.H. Rev. Stat. Ann. § 457:5 (1983)
NJ	18	N.J. Stat. Ann. § 9:17 B-1 (West Supp. 1986)
NM	18	N.M. Stat. Ann. § 40-1-6 (1986)
NY	18	N.Y. Dom. Rel. Law § 15 (McKinney Supp. 1987)

State	Age	Citation
NC	18	N.C. Gen. Stat. § 51-2 (1984)
ND	18	N.D. Cent. Code § 14-03-02 (1981)
OH	18	Ohio Rev. Code Ann. § 3101.01 (Baldwin 1983)
OK	18	Okla. Stat. Ann. tit. 43, § 3 (West 1979)
OR	18	Or. Rev. Stat. § 106.060 (1985)
PA	18	Pa. Stat. Ann. tit. 48, § 1-5 (Purdon Supp. 1986)
RI	18	R.I. Gen. Laws § 15-2-11 (1981)
SC	18	S.C. Code Ann. § 20-1-250 (Law. Co-op. 1985)
SD	18	S.D. Codified Laws Ann. § 25-1-9 (1984)
TN	18	Tenn. Code Ann. § 36-3-106 (1984)
TX	18	Tex. Fam. Code Ann. § 1.51 (Vernon 1987)
UT	18	Utah Code Ann. § 30-1-9 (1984)
VT	18	Vt. Stat. Ann. tit. 18, § 5142 (Supp. 1986)
VA	18	Va. Code Ann. § 20-49 (1983)
WA	18	Wash. Rev. Code Ann. § 26.04.210 (1986)
WV	18	W. Va. Code § 48-1-1 (1986)
WI	18	Wis. Stat. Ann. § 765.02 (West 1981)
WY	18	Wyo. Stat. § 20-1-102 (1977)
<u>Totals</u>	(50 States and D.C.)	
	<u>Age</u>	<u>18</u> <u>21</u>
	Number	50      1

APPENDIX D  
Consent to All Forms of Medical Treatment



Cumulative Totals by Age—50 States & D.C.



## CONSENT TO ALL FORMS OF MEDICAL TREATMENT

State	Age	Citation
AL	14	Ala. Code § 22-8-4 (1984)
AK	18	Alaska Stat. § 09.65.100 (1983)
AZ	18	Ariz. Rev. Stat. Ann. § 44-132 (1967)
AR	*	Ark. Stat. Ann. § 82-363 (Supp. 1986)
CA	18	Cal. Civ. Code § 25.8 (West 1982)
CO	18	Colo. Rev. Stat. § 13-22-103 (Supp. 1986)
CT	18	Conn. Gen. Stat. Ann. § 46b-150d (1986)
DL	18	Del. Code Ann. tit. 13, § 707 (1981)
DC	—	No Legislation
FL	18	Fla. Stat. Ann. § 743.064 (West 1986)
GA	18	Ga. Code Ann. § 31-9-2 (1985)
HI	17	Haw. Rev. Stat. § 577A-2 (1976)
ID	18	Idaho Code § 39-3801 (1985)
IL	18	Ill. Ann. Stat. ch. 111, para. 4501 (Smith-Hurd 1978)
IN	18	Ind. Code Ann. § 16-8-3-1 (Burns 1973)
IA	18	Iowa Code Ann. § 147.137 (West Supp. 1986)
KS	18	Kan. Stat. Ann. § 38-122 (1986)
KY	18	Ky. Rev. Stat. Ann. § 216B.400 (Michie/Bobbs-Merrill 1982)
LA	18	La. Rev. Stat. Ann. § 40:1095 (West 1977)
ME	18	Me. Rev. Stat. Ann. tit. 32, § 3292 (Supp. 1986)
MD	18	Md. Health-Gen. Code Ann. § 20-102 (1982)
MA	18	Mass. Gen. Laws Ann. ch. 112, § 12F (West 1983)
MI	—	No Legislation
MN	18	Minn. Stat. Ann. § 144.341 (West 1987)
MS	*	Miss. Code Ann. § 41-41-3 (Supp. 1986)
MO	18	Mo. Ann. Stat. § 431.061 (Vernon Supp. 1987)
MT	18	Mont. Code Ann. § 41-1-402 (1985)
NE	—	No Legislation
NV	18	Nev. Rev. Stat. § 129-030 (1957)
NH	—	No Legislation
NJ	18	N.J. Stat. Ann. § 9:17B-1 (West Supp. 1986)
NM	18	N.M. Stat. Ann. § 24-10-1 (1986)

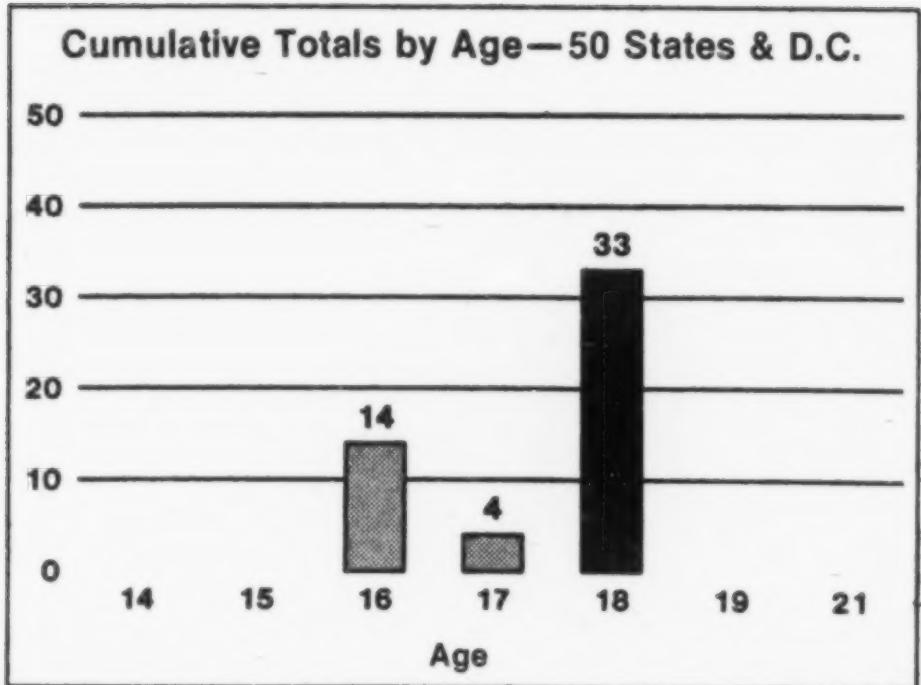
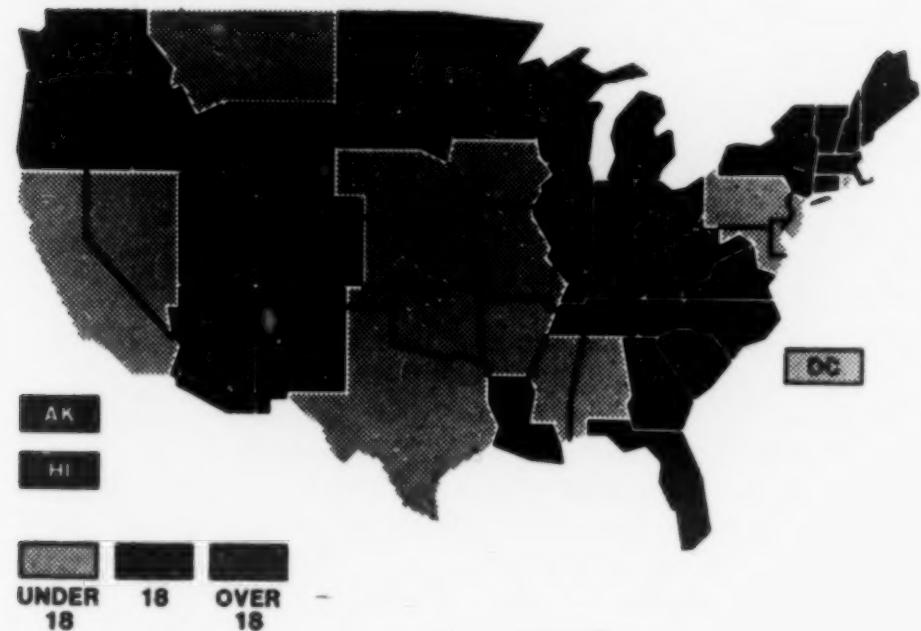
\* Minor able to understand

State	Age	Citation
NY	18	N.Y. Pub. Health Law § 2504 (McKinney 1985)
NC	18	N.C. Gen. Stat. § 90-21.1 (1985)
ND	18	N.D. Cent. Code § 14-10-17.1 (1981)
OH	18	Ohio Rev. Code Ann. § 2317.54 (Baldwin 1984)
OK	18	Okl. Stat. Ann. tit. 63, § 2602 (West 1984)
OR	15	Or. Rev. Stat. § 109.640 (1985)
PA	18	Pa. Stat. Ann. tit. 35, § 10101 (Purdon 1977)
RI	16	R.I. Gen. Laws § 23-4.6-1 (1985)
SC	18	S.C. Code Ann. § 20-7-280 (Law. Co-op. 1985)
SD	18	S.D. Codified Laws Ann. § 20-9-4.2 (Supp. 1986)
TN	18	Tenn. Code Ann. §§ 63-6-220 to 63-6-223 (1985)
TX	18	Tex. Fam. Code Ann. § 35.03 (1986)
UT	18	Utah Code Ann. § 78-14-5 (1977)
VT	—	No Legislation
VA	18	Va. Code Ann. § 54-325.2 (1982)
WA	18	Wash. Rev. Code Ann. § 26.28.015 (1986)
WV	—	No Legislation
WI	—	No Legislation
WY	—	No Legislation

Totals (50 States and D.C.)

	Age	14	15	16	17	18	Understand	No Legislation
Number	1	1	1	1	37	2	8	

APPENDIX E  
**Driving Without Parental Consent**

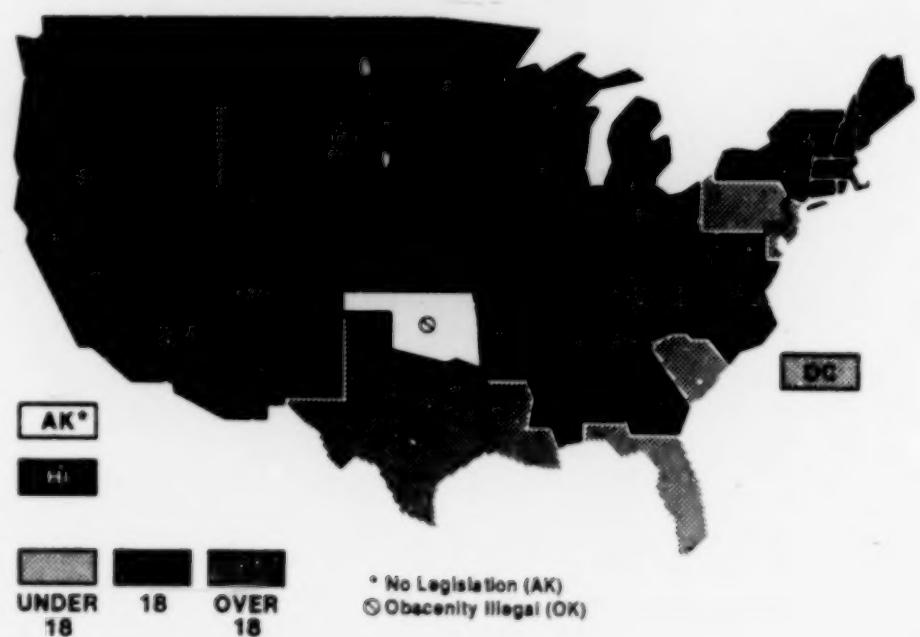


## DRIVING WITHOUT PARENTAL CONSENT

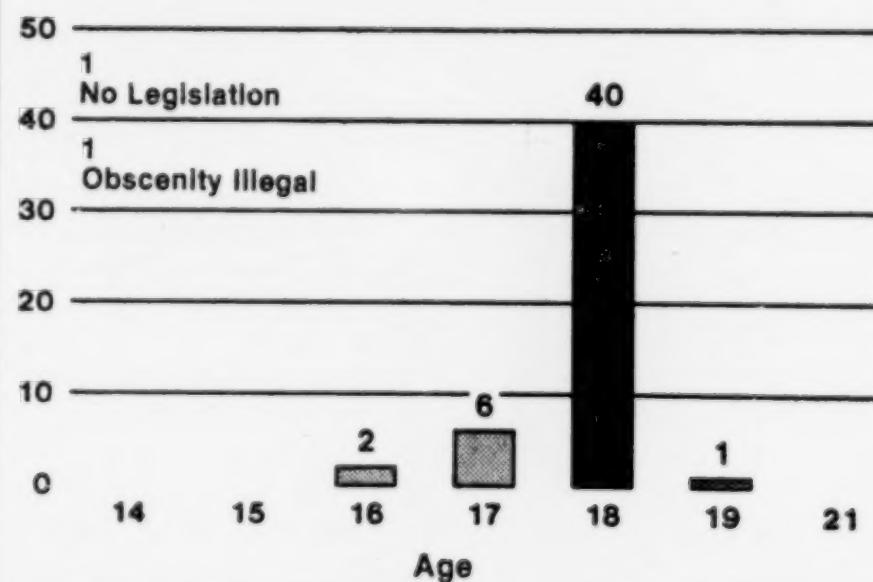
State	Age	Citation
AL	16	Ala. Code § 32-6-7 (1983)
AK	18	Alaska Stat. § 28.15.071 (1984)
AZ	18	Ariz. Rev. Stat. Ann. § 28-417 (1976)
AR	16	Ark. Stat. Ann. § 75-309 (1979)
CA	16	Cal. Veh. Code § 12507 (West Supp. 1987)
CO	18	Colo. Rev. Stat. § 42-2-107 (1984)
CT	18	Conn. Gen. Stat. § 14-36 (Supp. 1986)
DL	16	Del. Code Ann. tit. 21, § 2707 (Supp. 1984)
DC	16	D.C. Code Ann. § 40-301 (1981)
FL	18	Fla. Stat. Ann. § 322.09 (West Supp. 1987)
GA	18	Ga. Code Ann. § 40-5-26 (1985)
HI	18	Haw. Rev. Stat. § 286.112 (1985)
ID	18	Idaho Code § 49-313 (1980)
IL	18	Ill. Ann. Stat. ch. 95½, para. 6-103 (Smith-Hurd Supp. 1986)
IN	18	Ind. Code Ann. § 9-1-4-32 (Burns 1980)
IA	16	Iowa Code Ann. § 321.177 (West Supp. 1986)
KS	16	Kan. Stat. Ann. § 8-237 (1982)
KY	18	Ky. Rev. Stat. Ann. § 186.470 (Michie/Bobbs-Merrill Supp. 1986)
LA	18	La. Rev. Stat. Ann. § 32:407 (West Supp. 1987)
ME	18	Me. Rev. Stat. Ann. tit. 29, § 585 (Supp. 1986)
MD	16	Md. Transp. Code Ann. § 16-103 (1984)
MA	18	Mass. Gen. Laws Ann. ch. 90, § 8 (West Supp. 1986)
MI	18	Mich. Comp. Laws Ann. § 257.308 (West Supp. 1986)
MN	18	Minn. Stat. Ann. § 171.04 (West 1986)
MS	17	Miss. Code Ann. § 63-1-28 (Supp. 1986)
MO	16	Mo. Ann. Stat. § 302.060 (Vernon Supp. 1987)
MT	16	Mont. Code Ann. § 61-5-105 (1985)
NE	16	Neb. Rev. Stat. § 60-407 (1984)
NV	16	Nev. Rev. Stat. § 483.250 (1983)
NH	18	N.H. Rev. Stat. Ann. § 263:17 (1982)
NJ	17	N.J. Stat. Ann. § 39:3-10 (West 1973)
NM	18	N.M. Stat. Ann. § 66-5-11 (1984)
NY	18	N.Y. Veh. & Traf. Law § 502 (McKinney 1986)

State	Age	Citation
NC	18	N.C. Gen. Stat. § 20-11 (1983)
ND	18	N.D. Cent. Code § 39-06-08 (1981)
OH	18	Ohio Rev. Code Ann. § 4507.07 (Baldwin 1983)
OK	16	Okla. Stat. Ann. tit. 47, § 6-107 (West Supp. 1987)
OR	18	Or. Rev. Stat. § 807.060 (1985)
PA	17	Pa. Stat. Ann. tit. 75, § 1503 (Purdon 1977)
RI	16	R.I. Gen. Laws § 31-10-3 (Supp. 1986)
SC	18	S.C. Code Ann. § 56-1-100 (Law. Co-op. 1977)
SD	18	S.D. Codified Laws Ann. § 32-12-6 (1984)
TN	18	Tenn. Code Ann. § 55-7-104 (1980)
TX	17	Tex. Rev. Civ. Stat. Ann. art. 6687(b)(4) (Vernon Supp. 1987)
UT	18	Utah Code Ann. § 41-2-10 (1981)
VT	18	Vt. Stat. Ann. tit. 23, § 607 (1978)
VA	18	Va. Code Ann. § 46.1-357 (Supp. 1985)
WA	18	Wash. Rev. Code Ann. § 46.20-100 (Supp. 1987)
WV	18	W. Va. Code § 17B-2-3 (1986)
WI	18	Wis. Stat. Ann. § 343.15 (West 1986)
WY	18	Wyo. Stat. § 31-7-112 (Supp. 1986)
<b>Totals</b> (50 States and D.C.)		
<b>Age</b> <u>16</u> <u>17</u> <u>18</u>		
<b>Number</b> <u>14</u> <u>4</u> <u>33</u>		

APPENDIX F  
**Right to Purchase Pornographic Materials**



Cumulative Totals by Age—50 States & D.C.



## RIGHT TO PURCHASE PORNOGRAPHIC MATERIALS

State	Age	Citation
AL	18	Ala. Code § 13A-12-170 (1982)
AK	—	No Legislation
AZ	18	Ariz. Rev. Stat. Ann. § 13-3506 (1978)
AR	18	Ark. Stat. Ann. § 41-3582 (1977)
CA	18	Cal. Penal Code § 313.1 (West Supp. 1987)
CO	18	Colo. Rev. Stat. §§ 18-7-501 to 18-7-502 (1986)
CT	18	Conn. Gen. Stat. § 53a-196 (1985)
DL	17	Del. Code Ann. tit. 11, § 1361 (Supp. 1984)
DC	17	D.C. Code Ann. § 22-2001 (1981)
FL	17	Fla. Stat. Ann. § 847.012 (West Supp. 1987)
GA	18	Ga. Code Ann. § 16-12-103 (1984)
HI	18	Haw. Rev. Stat. § 712-1215 (1976)
ID	18	Idaho Code § 18-1513 (1979)
IL	18	Ill. Ann. Stat. ch. 38, para. 11-21 (Smith-Hurd 1979)
IN	18	Ind. Code Ann. § 35-30-11.1-1 (Burns 1979)
IA	18	Iowa Code Ann. § 728.2 (West 1979)
KS	18	Kan. Stat. Ann. § 21-4301a (1986)
KY	18	Ky. Rev. Stat. Ann. § 531-030 (Michie/Bobbs-Merrill 1985)
LA	17	La. Rev. Stat. Ann. § 14:91.11 (West 1986)
ME	18	Me. Rev. Stat. Ann. tit. 17, § 2911 (Supp. 1986)
MD	18	Md. Ann. Code art. 27, § 419 (Supp. 1985)
MA	18	Mass. Gen. Laws Ann. ch. 272, § 28 (West 1979)
MI	18	Mich. Comp. Laws Ann. § 750.142 (West Supp. 1986)
MN	18	Minn. Stat. Ann. § 617.293 (West 1987)
MS	18	Miss. Code Ann. § 97-5-27 (Supp. 1986)
MO	18	Mo. Ann. Stat. § 573.040 (Vernon 1979)
MT	18	Mont. Code Ann. § 45-8-201 (1985)
NE	18	Neb. Rev. Stat. § 28-808 (1985)
NV	18	Nev. Rev. Stat. Ann. § 201.265 (Michie 1957)
NH	18	N.H. Rev. Stat. Ann. § 571-B:2 (1986)
NJ	16	N.J. Stat. Ann. § 2C:24-4 (West 1982)
NM	18	N.M. Stat. Ann. §§ 30-37-1 to 30-37-2 (1984)
NY	18	N.Y. Penal Law § 235.21 (McKinney 1980)

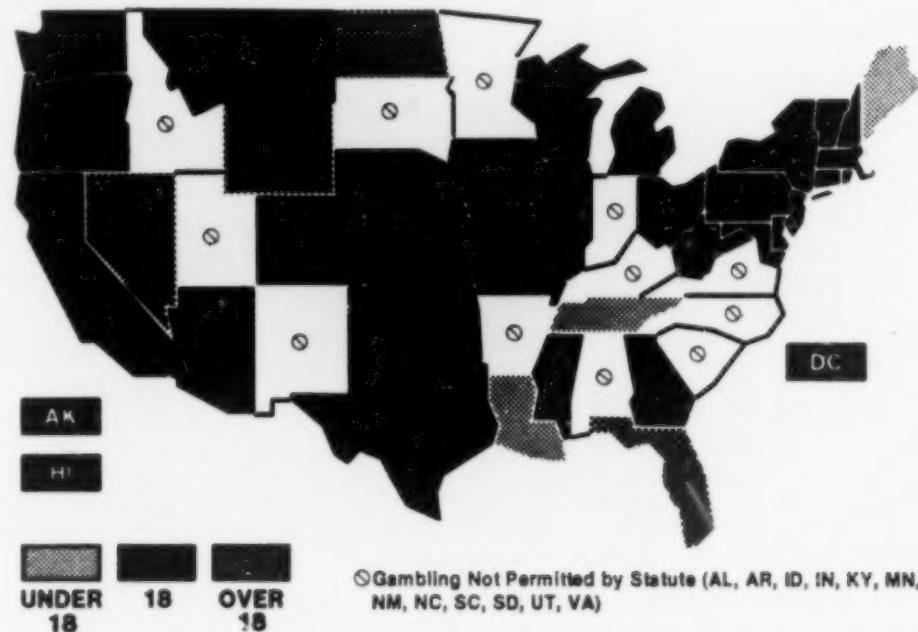
State	Age	Citation
NC	18	N.C. Gen. Stat. § 19-12 (1983)
ND	18	N.D. Cent. Code § 12.1-27.1-03 (1985)
OH	18	Ohio Rev. Code Ann. § 2907.31 (Baldwin 1986)
OK	—	Okla. Stat. Ann. tit. 21, § 1040.8 (West Supp. 1987) [Obscenity Illegal]
OR	18	Or. Rev. Stat. §§ 167.060 <i>et seq.</i> (1983)
PA	17	Pa. Stat. Ann. tit. 18, § 5903 (Purdon 1983)
RI	18	R.I. Gen. Laws § 11-31-10 (1981)
SC	16	S.C. Code Ann. § 16-15-370 (Law. Co-op. 1977)
SD	18	S.D. Codified Laws Ann. § 22-24-28 (1979)
TN	18	Tenn. Code Ann. §§ 39-6-1131 to 39-6-1132 (1982)
TX	17	Tex. Penal Code Ann. § 43.24 (Vernon 1974)
UT	18	Utah Code Ann. § 76-10-1206 (1978)
VT	18	Vt. Stat. Ann. tit. 13, §§ 2801 to 2802 (1974)
VA	18	Va. Code Ann. § 18.2-391 (1982)
WA	18	Wash. Rev. Code Ann. §§ 9.68.050 to 9.68.060 (1977)
WV	18	W. Va. Code §§ 61-8A-1 to 61-8A-2 (1984)
WI	18	Wis. Stat. Ann. § 944.21 (West 1982)
WY	19	Wyo. Stat. § 6-4-302 (1983) and § 8-1-102 (1986)

Totals (50 States and D.C.)

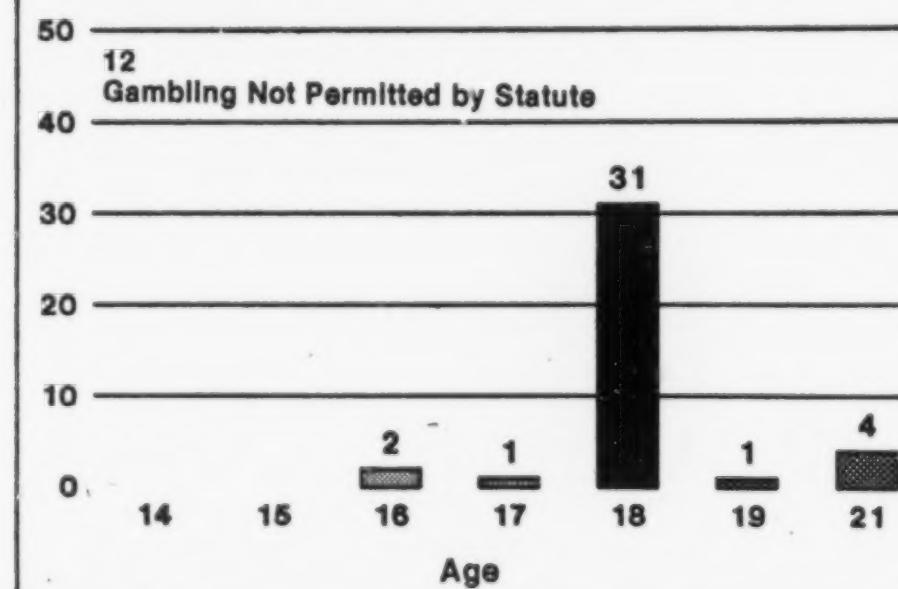
	Age	16	17	18	19	Obscenity Illegal	No Legislation
Number	2	6	40	1	1	1	1

1g

APPENDIX G  
Right to Participate in Legalized Gambling



Cumulative Totals by Age—50 States & D.C.



## RIGHT TO PARTICIPATE IN LEGALIZED GAMBLING

State	Age	Citation
AL	—	Gambling Not Permitted by Statute
AK	18	Alaska Stat. § 43.35.040 (1983)
AZ	18	Ariz. Rev. Stat. Ann. § 5-112 (1974)
AR	—	Gambling Not Permitted by Statute
CA	18	Cal. Penal Code § 326.5 (West Supp. 1987)
CO	18	Colo. Rev. Stat. § 24-35-214 (1982)
CT	18	Conn. Gen. Stat. § 7-186a (Supp. 1986)
DL	18	Del. Code Ann. tit. 29, § 4810 (1983)
DC	18	D.C. Code Ann. § 2-2534 (1981)
FL	21	Fla. Stat. Ann. § 849.093 (West Supp. 1987)
GA	18	Ga. Code Ann. § 16-12-58 (1984)
HI	18	Haw. Rev. Stat. § 712-1231 (1976)
ID	—	Gambling Not Permitted by Statute
IL	18	Ill. Ann. Stat. ch. 120, para. 1102 (Smith-Hurd Supp. 1986)
IN	—	Gambling Not Permitted by Statute
IA	18	Iowa Code Ann. § 233.1 (West 1985)
KS	18	Kan. Stat. Ann. § 79-4706 (Supp. 1984)
KY	—	Gambling Not Permitted by Statute
LA	17	La. Rev. Stat. Ann. § 14:92 (West 1986)
ME	16	Me. Rev. Stat. Ann. tit. 17, § 319 (1983)
MD	18	Md. Ann. Code art. 9, § 124 (1984)
MA	18	Mass. Gen. Laws Ann. ch. 128A, § 10 (West 1974)
MI	18	Mich. Comp. Laws Ann. § 18.969(110a) (West 1986)
MN	—	Gambling Not Permitted by Statute
MS	21	Miss. Code Ann. § 97-33-21 (1972)
MO	18	Mo. Ann. Stat. § 313.280 (Vernon 1987)
MT	18	Mont. Code Ann. § 23-5-506 (1985)
NE	18	Neb. Rev. Stat. § 9-150 (Supp. 1984)
NV	21	Nev. Rev. Stat. § 463.350 (1985)
NH	18	N.H. Rev. Stat. Ann. § 287:2 (1978)
NJ	18	N.J. Stat. Ann. § 9:17B-1 (West Supp. 1986)
NM	—	Gambling Not Permitted by Statute
NY	18	N.Y. Tax Law § 1610 (McKinney 1987)
NC	—	Gambling Not Permitted by Statute

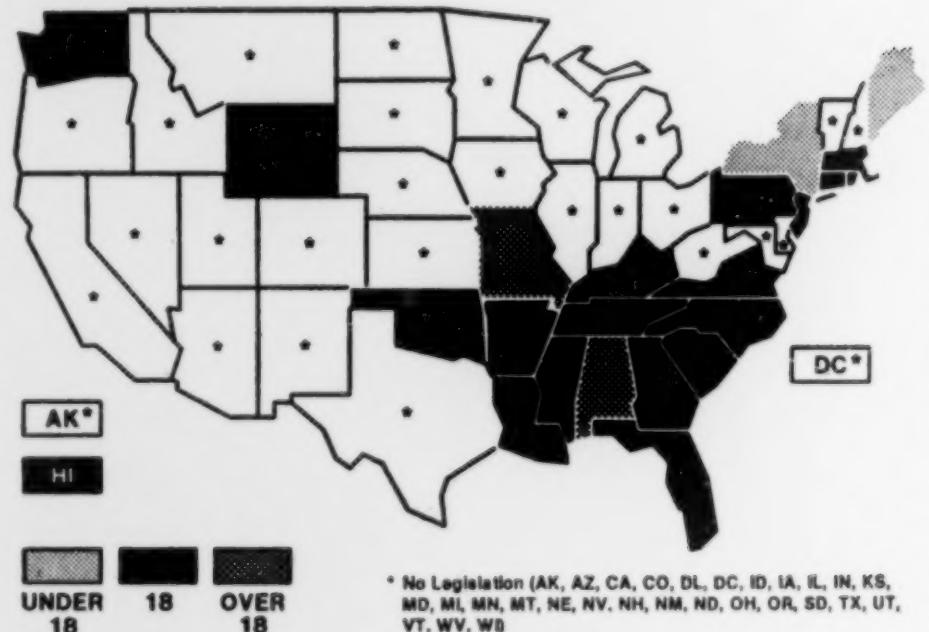
State	Age	Citation
ND	21	N.D. Cent. Code § 53-06.1-07.1 (Supp. 1985)
OH	18	Ohio Rev. Code Ann. § 3770.07 (Baldwin 1983)
OK	18	Okla. Stat. Ann. tit. 21, § 995.13 (West 1983)
OR	18	Or. Rev. Stat. § 163.575 (1985)
PA	18	Pa. Stat. Ann. tit. 10, § 305 (Purdon Supp. 1986)
RI	18	R.I. Gen. Laws § 11-19-32 (Supp. 1986)
SC	—	Gambling Not Permitted by Statute
SD	—	Gambling Not Permitted by Statute
TN	16	Tenn. Code Ann. § 39-6-609(f) (Supp. 1986)
TX	18	Tex. Rev. Civ. Stat. Ann. art. 179d, § 17 (Ver- non Supp. 1987)
UT	—	Gambling Not Permitted by Statute
VT	18	Vt. Stat. Ann. tit. 31, § 674(J) (Supp. 1985)
VA	—	Gambling Not Permitted by Statute
WA	18	Wash. Rev. Code Ann. § 67.70.120 (1985)
WV	18	W. Va. Code § 19-23-9 (1986)
WI	18	Wis. Stat. Ann. § 163.51 (West 1974)
WY	19	Wyo. Stat. § 11-25-109 (1986)

Totals (50 States and D.C.)

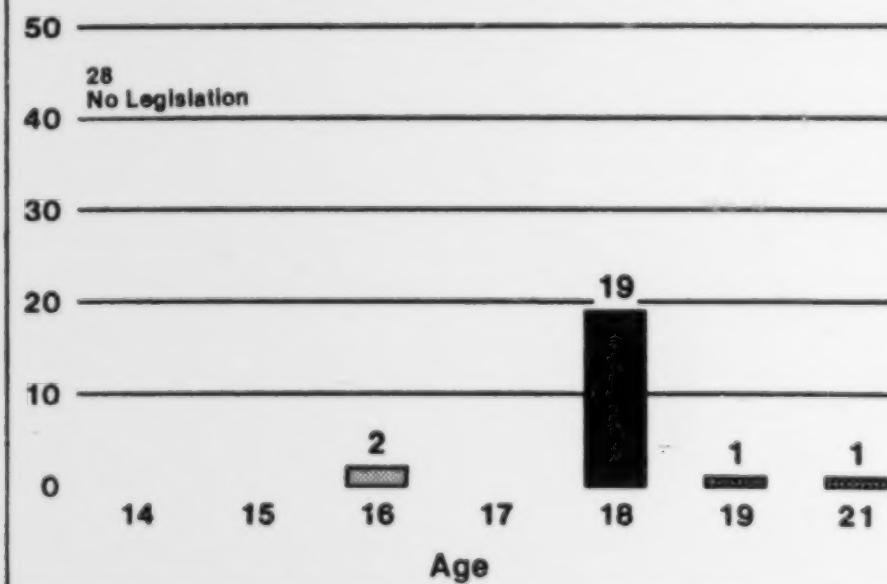
	Gambling Not Permitted					
Age	16	17	18	19	21	
Number	2	1	31	1	4	12

1h

APPENDIX H  
Right to Patronize Pool Halls



Cumulative Totals by Age—50 States & D.C.



2h

## RIGHT TO PATRONIZE POOL HALLS

State	Age	Citation
AL	19	Ala. Code § 34-6-9 (1985)
AK	—	No Legislation
AZ	—	No Legislation
AR	18	Ark. Stat. Ann. § 41-2461 (1977)
CA	—	No Legislation
CO	—	No Legislation
CT	18	Conn. Gen. Stat. § 53-281 (1985)
DL	—	No Legislation
DC	—	No Legislation
FL	18	Fla. Stat. Ann. § 849.04 (West 1976) [Minor may not play where betting allowed]
GA	18	Ga. Code Ann. § 43-8-10 (1984) [Minors may not enter premises if alcohol sold]
HI	18	Haw. Rev. Stat. § 445-54 (1985)
ID	—	No Legislation
IL	—	No Legislation
IN	—	No Legislation
IA	—	No Legislation
KS	—	No Legislation
KY	18	Ky. Rev. Stat. Ann. § 436.320 (Michie/Bobbs-Merrill 1985)
LA	18	La. Rev. Stat. Ann. § 26:88 (West Supp. 1986)
ME	16	Me. Rev. Stat. Ann. tit. 26, § 773 (1974)
MD	—	No Legislation
MA	18	Mass. Gen. Laws Ann. ch. 140, § 179 (West 1974)
MI	—	No Legislation
MN	—	No Legislation
MS	18	Miss. Code Ann. § 97-5-11 (Supp. 1986)
MO	21	Mo. Ann. Stat. § 318.090 (Vernon 1963)
MT	—	No Legislation
NE	—	No Legislation
NV	—	No Legislation
NH	—	No Legislation
NJ	18	N.J. Stat. Ann. § 34:2-21.17 (West Supp. 1986)
NM	—	No Legislation
NY	16	N.Y. Gen. Bus. Law § 465 (McKinney 1984)

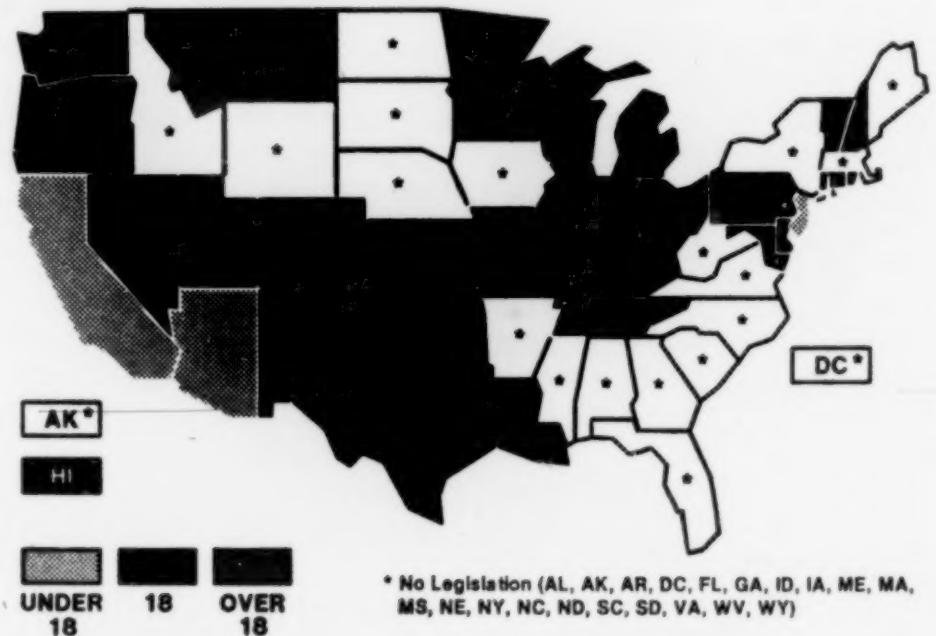
3h

State	Age	Citation
NC	18	N.C. Gen. Stat. § 14-317 (1986) [Minors may not enter premises where alcohol sold]
ND	—	No Legislation
OH	—	No Legislation
OK	18	Okl. Stat. Ann. tit. 21, § 1103 (West Supp. 1983)
OR	—	No Legislation
PA	18	Pa. Stat. Ann. tit. 18, § 7105 (Purdon 1983)
RI	18	R.I. Gen. Laws § 5-2-13 (1976)
SC	18	S.C. Code Ann. § 20-7-350 (1985)
SD	—	No Legislation
TN	18	Tenn. Code Ann. § 39-4-419 (Supp. 1986)
TX	—	No Legislation
UT	—	No Legislation
VT	—	No Legislation
VA	18	Va. Code Ann. § 40.1-100 (1986)
WA	18	Wash. Rev. Code Ann. § 26.28.080 (1986)
WV	—	No Legislation
WI	—	No Legislation
WY	18	Wyo. Stat. § 33-6-108(b) (1986)

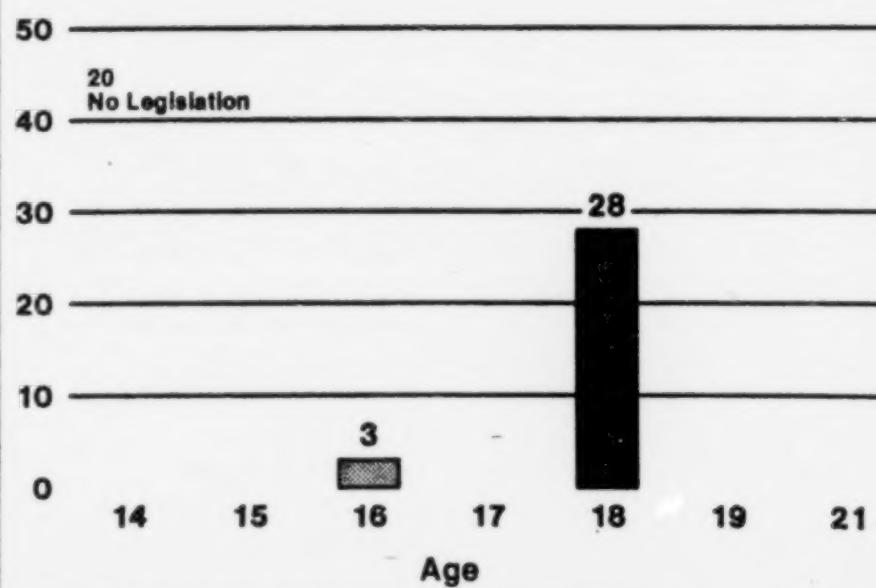
Totals (50 States and D.C.)

	Age	No			
		16	18	19	21
Number	2	19	1	1	Legislation
					28

APPENDIX I  
Right to Pawn Property or to Sell to Junk or  
Precious Metals Dealers



Cumulative Totals by Age—50 States & D.C.



RIGHT TO PAWN PROPERTY OR TO SELL  
TO JUNK OR PRECIOUS METALS DEALERS

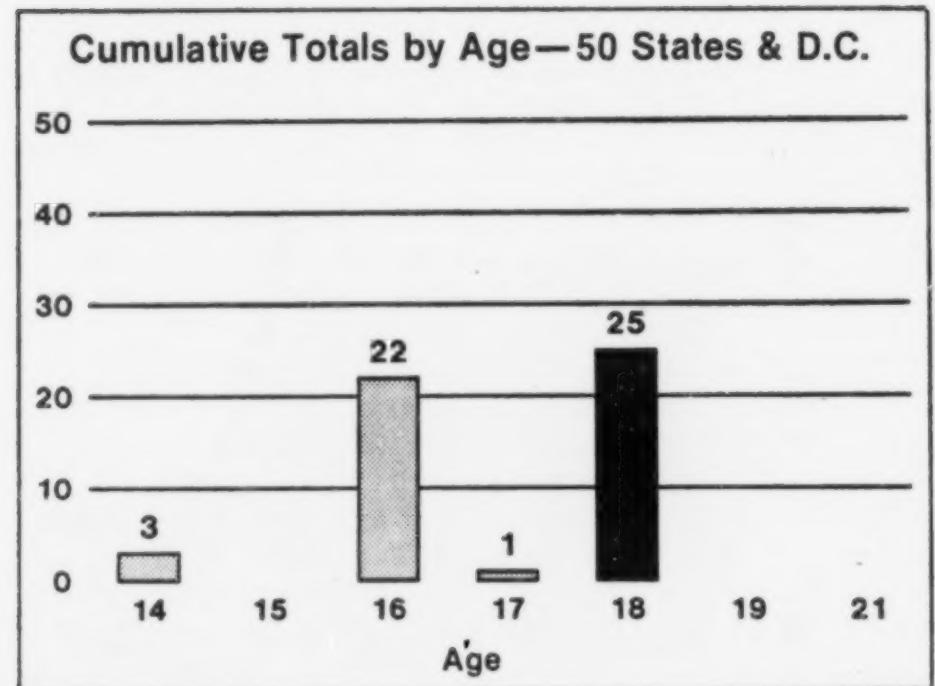
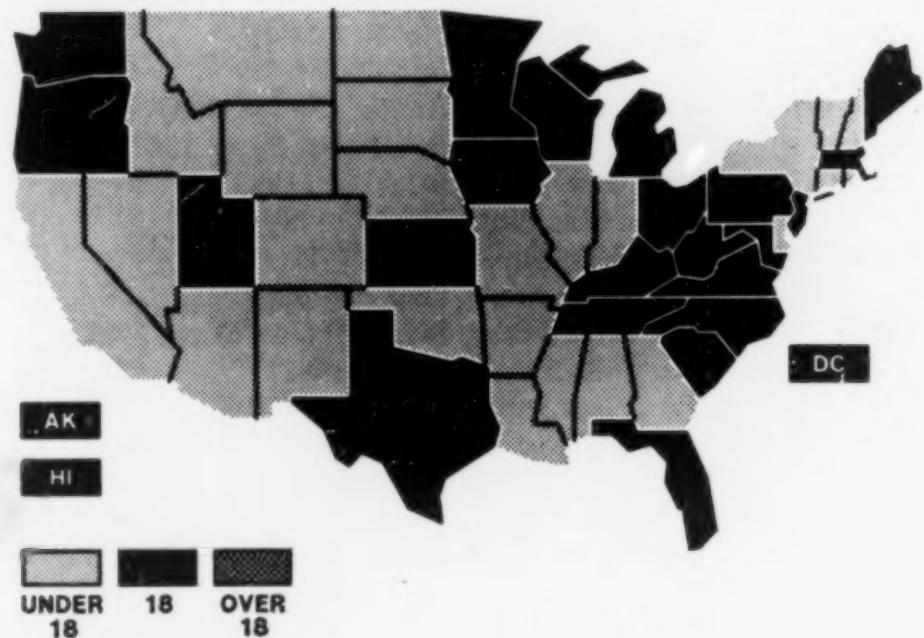
State	Age	Citation
AL	—	No Legislation
AK	—	No Legislation
AZ	16	Ariz. Rev. Stat. Ann. § 44-1627 (Supp. 1986)
AR	—	No Legislation
CA	16	Cal. Fin. Code § 21207 (West 1981)
CO	18	Colo. Rev. Stat. § 12-56-104 (1985)
CT	18	Conn. Gen. Stat. § 21-47 (1985)
DL	18	Del. Code Ann. tit. 24, § 2312 (1981)
DC	—	No Legislation
FL	—	No Legislation
GA	—	No Legislation
HI	18	Haw. Rev. Stat. § 445-133 (1985)
ID	—	No Legislation
IL	18	Ill. Ann. Stat. ch. 23, para. 2366 (Smith-Hurd 1968)
IN	18	Ind. Code Ann. § 28-7-5-36 (Burns 1973)
IA	—	No Legislation
KS	18	Kan. Stat. Ann. § 16-717 (1981)
KY	18	Ky. Rev. Stat. Ann. § 226.030 (Michie/Bobbs-Merrill 1982)
LA	18	La. Rev. Stat. Ann. § 37:1764 (West Supp. 1987)
ME	—	No Legislation
MD	18	Md. Code Ann. art. 56, § 424 (1983)
MA	—	No Legislation
MI	18	Mich. Comp. Laws Ann. § 750.137 (West Supp. 1986)
MN	18	Minn. Stat. Ann. § 609.81 (West Supp. 1987)
MS	—	No Legislation
MO	18	Mo. Ann. Stat. § 568.070 (Vernon 1979)
MT	18	Mont. Code Ann. § 45-5-623 (1985)
NE	—	No Legislation
NV	18	Nev. Rev. Stat. § 647.140 (1985)
NH	18	N.H. Rev. Stat. Ann. § 398:2 (1983)
NJ	16	N.J. Stat. Ann. § 45:22-31 (West 1978)
NM	18	N.M. Stat. Ann. § 56-12-14 (1986)
NY	—	No Legislation

State	Age	Citation
NC	—	No Legislation
ND	—	No Legislation
OH	18	Ohio Rev. Code Ann. § 4727.10 (Baldwin 1984)
OK	18	Okla. Stat. Ann. tit. 59, § 1511 (West Supp. 1987)
OR	18	Or. Rev. Stat. § 726.270 (1985)
PA	18	Pa. Stat. Ann. tit. 63, § 281-29 (Purdon Supp. 1986)
RI	18	R.I. Gen. Laws § 19-26-12 (1982)
SC	—	No Legislation
SD	—	No Legislation
TN	18	Tenn. Code Ann. § 45-6-110 (1980)
TX	18	Tex. Rev. Civ. Stat. Ann. art. 5069-51.16 (Vernon 1987)
UT	18	Utah Code Ann. § 10-8-39 (1986)
VT	18	Vt. Stat. Ann. tit. 9, § 3870 (1984)
VA	—	No Legislation
WA	18	Wash. Rev. Code Ann. § 19.60.066 (Supp. 1987)
WV	—	No Legislation
WI	18	Wis. Stat. Ann. § 943.35 (West 1982)
WY	—	No Legislation

Totals (50 States and D.C.)

	Age	16	18	No Legislation
Number	3	28	20	

## APPENDIX J

**Right to Work in Hazardous Occupations**

## RIGHT TO WORK IN HAZARDOUS OCCUPATIONS

State	Age	Citation
AL	16	Ala. Code § 25-8-2 (1986)
AK	18	Alaska Stat. § 23.10.350 (1984)
AZ	16	Ariz. Const. art. 18, § 2
AR	16	Ark. Stat. Ann. § 81.702 (Supp. 1985)
CA	16	Cal. Lab. Code § 1292 (West Supp. 1987)
CO	14	Colo. Rev. Stat. § 8-12-110 (1986)
CT	16	Conn. Gen. Stat. § 31-24 (1987)
DL	16	Del. Code Ann. tit. 19, § 512 (1979)
DC	18	D.C. Code Ann. § 36-505 (1981)
FL	18	Fla. Stat. Ann. § 450.061 (West Supp. 1987)
GA	16	Ga. Code Ann. § 39-2-2 (1982)
HI	18	Haw. Rev. Stat. § 390-3 (1985)
ID	14	Idaho Code § 44-1301 (1977)
IL	16	Ill. Ann. Stat. ch. 48, para. 31.1 (Smith-Hurd 1986)
IN	17	Ind. Code Ann. § 20-8.1-4-24 (Burns 1975)
IA	18	Iowa Code Ann. § 92.8 (West 1984)
KS	18	Kan. Stat. Ann. § 38-602 (1986)
KY	18	Ky. Rev. Stat. Ann. § 339.230 (Michie/E^bbs-Merrill Supp. 1986)
LA	16	La. Rev. Stat. Ann. § 23:163 (West 1985)
ME	18	Me. Rev. Stat. Ann. tit. 26, § 772 (Supp. 1986)
MD	18	Md. Code Ann. art. 100, § 11 (1985)
MA	18	Mass. Gen. Laws. Ann. ch. 149, § 62 (West 1982)
MI	18	Mich. Comp. Laws Ann. § 409.103 (West 1985)
MN	18	Minn. Stat. Ann. § 181A.04 (West Supp. 1987)
MS	14	Miss. Code Ann. § 71-1-17 (1972)
MO	16	Mo. Ann. Stat. § 292.040 (Vernon 1965)
MT	16	Mont. Code Ann. § 41-2-101 (1985)
NE	16	Neb. Rev. Stat. § 48-313 (1984)
NV	16	Nev. Rev. Stat. § 609.190 (1973)
NH	16	N.H. Rev. Stat. Ann. § 276-A:4 (1978)
NJ	18	N.J. Stat. Ann. § 34:2-21.17 (West Supp. 1986)
NM	16	N.M. Stat. Ann. § 50-6-4 (1978)
NY	16	N.Y. Lab. Law § 133 (McKinney 1986)
NC	18	N.C. Gen. Stat. § 95-25.5 (1985)

State	Age	Citation
ND	16	N.D. Cent. Code § 34-07-16 (Supp. 1985)
OH	18	Ohio Rev. Code Ann. § 4109.05 (Baldwin 1983)
OK	16	Okla. Stat. Ann. tit. 40, § 72 (West 1986)
OR	18	Or. Rev. Stat. § 653.330 (1985)
PA	18	Pa. Stat. Ann. tit. 43, § 44 (Purdon Supp. 1986)
RI	16	R.I. Gen. Laws § 28-3-10 (1986)
SC	18	S.C. Code Ann. § 41-13-20 (1986)
SD	16	S.D. Codified Laws Ann. § 60-12-3 (1978)
TN	18	Tenn. Code Ann. § 50-5-104 (1983)
TX	18	Tex. Rev. Civ. Stat. Ann. art. 5181.1 (Vernon 1987)
UT	18	Utah Code Ann. § 34-23-2 (1974)
VT	16	Vt. Stat. Ann. tit. 21, § 437 (1978)
VA	18	Va. Code Ann. § 40.1-100 (1986)
WA	18	Wash. Rev. Code Ann. § 26.28.070 (1986)
WV	18	W. Va. Code § 21-6-2 (1985)
WI	18	Wis. Stat. Ann. § 103.65 (West 1974)
WY	16	Wyo. Stat. § 27-6-112 (1983)

Totals (50 States and D.C.)

	Age	14	16	17	18
Number		3	22	1	25

## APPENDIX K

STATE OF MARYLAND  
OFFICE OF THE GOVERNOR

[SEAL]

WILLIAM DONALD SCHAEFER IN REPLY REFER TO: GO-02  
GOVERNOR

April 7, 1987

Honorable R. Clayton Mitchell, Speaker  
Maryland House of Delegates  
Room 101, State House  
Annapolis, Maryland 21401

Dear Speaker Mitchell:

The matter of exempting minors from the death penalty will come before you in the form of Senate Bill 598. When it does, I hope you will treat it favorably.

The measure bears impressive credentials. It is the first bill of its kind to pass the Senate. I was struck by the fact that the decisive Senate votes came not from newly-elected members of that Chamber, but from Senate veterans who had opposed an exemption for minors in previous years.

The bill also has the support of the principal spokespeople of all of the State's major religious faiths. This impressive coming together of our State's religious leadership may be unprecedented.

I believe it is for the good of the children of our State to establish a minimum age for the imposition of the death penalty, indeed, as have most other states and most other nations. Maryland law itself currently recognizes that age can be considered a mitigating factor at the sentencing phase of a capital trial.

I must, however, express my concern with the Amendments placed on the bill by the Judiciary Committee.

These Amendments would change the application of the death penalty exemption from under 18 to under 16. Eighteen years of age is recognized by international agreements to which the United States is signatory as the appropriate age for which the death penalty for capital crimes should be considered. Indeed, nine other states in our country set a minimum of 18 for the imposition of the death penalty. This is a significantly larger number of states than those which recognize any other minimum age cutoff.

As a State, we also distinguish the actions of children from the actions of adults. In the area of contracts, motor vehicles and voting, we recognize that juveniles are not fully responsible for their actions. Society as a whole shares responsibility for the actions of its children.

I have not come to this position quickly or lightly. Families and friends of murder victims have intense and legitimate needs, most often overlooked by the criminal justice process. Although we have made tremendous efforts as a State to help victims to no longer be dominated by their tragic loss, much more needs to be done. However, I do not believe that the execution of convicted juveniles can contribute to us fulfilling our obligation to crime's victims.

It is my sincere hope that you will work to return Senate Bill 598 to the same posture as it was first read in the House of Delegates and act favorably on our legislation.

Thank you very much for allowing me to express my views to you on this important issue. I know that this issue is an important personal decision for all of us to make.

Sincerely,

/s/ Don Schaefer  
Governor

cc: Members of the  
House of Delegates